

E2SSB 5669 - H AMD 827

By Representative Orcutt

NOT CONSIDERED 03/25/2011

1 On page 63, after line 16, insert the following:

2 "SUBPART E
3 PROVIDING DIRECTION TO AGENCIES TO BE THE SOLE IMPLEMENTER OF PROGRAMS
4 UNDER THEIR JURISDICTION
5

6 NEW SECTION. **Sec. 262.** A new section is added to chapter 77.12
7 RCW to read as follows:

8 Unless expressly identified otherwise in statute, the department
9 shall administer all provisions of this title, and all other statutes
10 for which the department has been given administrative authority,
11 directly and without assistance, cooperation, advice, counsel, notice,
12 or interference with or from other state agencies. Nothing in this
13 section prohibits expertise from other state agencies to be collected
14 during the rule-making stage of statutory implementation.
15

16 NEW SECTION. **Sec. 263.** A new section is added to chapter 43.21A
17 RCW to read as follows:

18 Unless expressly identified otherwise in statute, the department
19 shall administer all provisions of this title, and all other statutes
20 and chapters for which the department has been given administrative
21 authority, directly and without assistance, cooperation, advice,
22 counsel, notice, or interference with or from other state agencies.
23 Nothing in this section prohibits expertise from other state agencies
24 to be collected during the rule-making stage of statutory
25 implementation.
26
27

1 **Sec. 264.** RCW 43.30.411 and 2003 c 334 s 108 and 2003 c 312 s 1
2 are each reenacted and amended to read as follows:

3 (1) The department shall exercise all of the powers, duties, and
4 functions now vested in the commissioner of public lands and such
5 powers, duties, and functions are hereby transferred to the
6 department. However, nothing contained in this section shall effect
7 the commissioner's ex officio membership on any committee provided by
8 law.

9 (2) Unless expressly identified otherwise in statute, the
10 department shall administer all provisions of this title, and all
11 other statutes for which the department has been given administrative
12 authority, directly and without assistance, cooperation, advice,
13 counsel, notice, or interference with or from other state agencies.
14 Nothing in this section prohibits expertise from other state agencies
15 to be collected during the rule-making stage of statutory
16 implementation.

17 (3)(a) Except as provided in (b) of this subsection, and subject
18 to the limitations of RCW 4.24.115, the department, in the exercise of
19 any of its powers, may include in any authorized contract a provision
20 for indemnifying the other contracting party against loss or damages.

21 (b) When executing a right-of-way or easement contract over
22 private land that involves forest management activities, the
23 department shall indemnify the private landowner if the landowner does
24 not receive a direct benefit from the contract.

25
26 NEW SECTION. **Sec. 265.** A new section is added to chapter 79A.05
27 RCW to read as follows:

28 Unless expressly identified otherwise in statute, the commission
29 shall administer all provisions of this title, and all other statutes
30 for which the commission has been given administrative authority,
31 directly and without assistance, cooperation, advice, counsel, notice,
32 or interference with or from other state agencies. Nothing in this
33 section prohibits expertise from other state agencies to be collected
34 during the rule-making stage of statutory implementation.

1 NEW SECTION. **Sec. 266.** A new section is added to chapter 89.08
2 RCW to read as follows:

3 Unless expressly identified otherwise in statute, the commission
4 shall administer all provisions of this title, and all other statutes
5 for which the commission has been given administrative authority,
6 directly and without assistance, cooperation, advice, counsel, notice,
7 or interference with or from other state agencies. Nothing in this
8 section prohibits expertise from other state agencies to be collected
9 during the rule-making stage of statutory implementation.

10

11 NEW SECTION. **Sec. 267.** A new section is added to chapter 43.23
12 RCW to read as follows:

13 Unless expressly identified otherwise in statute, the department
14 shall administer all provisions of this title, and all other statutes
15 for which the department has been given administrative authority,
16 directly and without assistance, cooperation, advice, counsel, notice,
17 or interference with or from other state agencies. Nothing in this
18 section prohibits expertise from other state agencies to be collected
19 during the rule-making stage of statutory implementation.

20

21 NEW SECTION. **Sec. 268.** A new section is added to chapter 79A.25
22 RCW to read as follows:

23 Unless expressly identified otherwise in statute, the recreation
24 and conservation office shall administer all provisions of this title,
25 and all other statutes for which the office has been given
26 administrative authority, directly and without assistance,
27 cooperation, advice, counsel, notice, or interference with or from
28 other state agencies. Nothing in this section prohibits expertise
29 from other state agencies to be collected during the rule-making stage
30 of statutory implementation.

31

32 NEW SECTION. **Sec. 269.** A new section is added to chapter 76.09
33 RCW to read as follows:

34

1 Unless expressly identified otherwise in statute, the board shall
2 ensure that all provisions of this title, and all other statutes
3 relating to forest practices, are to be administered by the department
4 of natural resources directly and without assistance, cooperation,
5 advice, counsel, notice, or interference with or from other state
6 agencies. Nothing in this section prohibits expertise from other
7 state agencies to be collected during the rule-making stage of
8 statutory implementation.

9

10 **Sec. 270.** RCW 76.09.360 and 1997 c 290 s 2 are each amended to
11 read as follows:

12 The department (~~((together with the department of fish and
13 wildlife, and the department of ecology relating to water quality
14 protection,))~~) shall develop a suitable process to permit landowners to
15 secure all permits required for the conduct of forest practices (~~((in a
16 single multiyear permit))~~) to be (~~((jointly))~~) issued only by the
17 (~~((departments and the departments shall report their findings to the
18 legislature not later than December 31, 2000))~~) department.

19

20

21 **Sec. 271.** RCW 77.55.011 and 2010 c 210 s 26 are each reenacted
22 and amended to read as follows:

23 The definitions in this section apply throughout this chapter
24 unless the context clearly requires otherwise.

25 (1) "Bed" means the land below the ordinary high water lines of
26 state waters. This definition does not include irrigation ditches,
27 canals, storm water runoff devices, or other artificial watercourses
28 except where they exist in a natural watercourse that has been altered
29 artificially.

30 (2) "Board" means the pollution control hearings board created in
31 chapter 43.21B RCW.

32 (3) (~~(("Commission" means the state fish and wildlife commission.~~
33 ~~——(4)——~~)) "Date of receipt" has the same meaning as defined in RCW
34 43.21B.001.

1 ~~((+5))~~ (4) "Department" means the department of ~~((fish and~~
2 ~~wildlife))~~ ecology.

3 ~~((+6))~~ (5) "Director" means the director of the department ~~((of~~
4 ~~fish and wildlife))~~.

5 ~~((+7))~~ (6) "Emergency" means an immediate threat to life, the
6 public, property, or of environmental degradation.

7 ~~((+8))~~ (7) "Hydraulic project" means the construction or
8 performance of work that will use, divert, obstruct, or change the
9 natural flow or bed of any of the salt or freshwaters of the state.

10 ~~((+9))~~ (8) "Imminent danger" means a threat by weather, water
11 flow, or other natural conditions that is likely to occur within sixty
12 days of a request for a permit application.

13 ~~((+10))~~ (9) "Marina" means a public or private facility providing
14 boat moorage space, fuel, or commercial services. Commercial services
15 include but are not limited to overnight or live-aboard boating
16 accommodations.

17 ~~((+11))~~ (10) "Marine terminal" means a public or private
18 commercial wharf located in the navigable water of the state and used,
19 or intended to be used, as a port or facility for the storing,
20 handling, transferring, or transporting of goods to and from vessels.

21 ~~((+12))~~ (11) "Ordinary high water line" means the mark on the
22 shores of all water that will be found by examining the bed and banks
23 and ascertaining where the presence and action of waters are so common
24 and usual, and so long continued in ordinary years as to mark upon the
25 soil or vegetation a character distinct from the abutting upland.
26 Provided, that in any area where the ordinary high water line cannot
27 be found, the ordinary high water line adjoining saltwater is the line
28 of mean higher high water and the ordinary high water line adjoining
29 fresh water is the elevation of the mean annual flood.

30 ~~((+13))~~ (12) "Permit" means a hydraulic project approval permit
31 issued under this chapter.

32 ~~((+14))~~ (13) "Sandbars" includes, but is not limited to, sand,
33 gravel, rock, silt, and sediments.

34

1 (~~(15)~~) (14) "Small scale prospecting and mining" means the use
2 of only the following methods: Pans; nonmotorized sluice boxes;
3 concentrators; and minirocker boxes for the discovery and recovery of
4 minerals.

5 (~~(16)~~) (15) "Spartina," "purple loosestrife," and "aquatic
6 noxious weeds" have the same meanings as defined in RCW 17.26.020.

7 (~~(17)~~) (16) "Streambank stabilization" means those projects that
8 prevent or limit erosion, slippage, and mass wasting. These projects
9 include, but are not limited to, bank resloping, log and debris
10 relocation or removal, planting of woody vegetation, bank protection
11 using rock or woody material or placement of jetties or groins, gravel
12 removal, or erosion control.

13 (~~(18)~~) (17) "Tide gate" means a one-way check valve that
14 prevents the backflow of tidal water.

15 (~~(19)~~) (18) "Waters of the state" and "state waters" means all
16 salt and fresh waters waterward of the ordinary high water line and
17 within the territorial boundary of the state.

18
19 **272.** RCW 77.55.191 and 2005 c 146 s 506 are each amended to read
20 as follows:

21 (1) Except for the north fork of the Lewis river and the White
22 Salmon river, all streams and rivers tributary to the Columbia river
23 downstream from McNary dam are established as an anadromous fish
24 sanctuary. This sanctuary is created to preserve and develop the food
25 fish and game fish resources in these streams and rivers and to
26 protect them against undue industrial encroachment.

27 (2) Within the sanctuary area:

28 (a) The department shall not issue a permit to construct a dam
29 greater than twenty-five feet high within the migration range of
30 anadromous fish as determined by the department.

31 (b) A person shall not divert water from rivers and streams in
32 quantities that will reduce the respective stream flow below the
33 annual average low flow, based upon data published in United States
34 geological survey reports.

1 (3) The fish and wildlife commission may acquire and abate a dam
2 or other obstruction, or acquire any water right vested on a sanctuary
3 stream or river, which is in conflict with the provisions of
4 subsection (2) of this section.

5 (4) Subsection (2)(a) of this section does not apply to the
6 sediment retention structure to be built on the North Fork Toutle
7 river by the United States army corps of engineers.

8
9 NEW SECTION. **Sec. 273.** A new section is added to chapter 77.55
10 RCW to read as follows:

11 The requirements of RCW 77.55.021 are to be considered satisfied
12 for any project that is required under chapter 76.09 RCW to submit a
13 forest practices application or that is associated with any project
14 that is required under chapter 76.09 RCW to submit a forest practices
15 application.

16
17 **Sec. 274.** RCW 76.09.040 and 2010 c 188 s 4 are each amended to
18 read as follows:

19 (1)(a) Where necessary to accomplish the purposes and policies
20 stated in RCW 76.09.010, and to implement the provisions of this
21 chapter, the board shall adopt forest practices rules pursuant to
22 chapter 34.05 RCW and in accordance with the procedures enumerated in
23 this section that:

- 24 (i) Establish minimum standards for forest practices;
- 25 (ii) Provide procedures for the voluntary development of resource
26 management plans which may be adopted as an alternative to the minimum
27 standards in (a)(i) of this subsection if the plan is consistent with
28 the purposes and policies stated in RCW 76.09.010 and the plan meets
29 or exceeds the objectives of the minimum standards;
- 30 (iii) Set forth necessary administrative provisions;
- 31 (iv) Establish procedures for the collection and administration of
32 forest practice fees as set forth by this chapter; and
- 33 (v) Allow for the development of watershed analyses.

1 (b) Forest practices rules pertaining to water quality protection
2 shall be adopted by the board after reaching agreement with the
3 director of the department of ecology or the director's designee on
4 the board with respect thereto. All other forest practices rules
5 shall be adopted by the board.

6 (c) Forest practices rules shall be administered and enforced by
7 either the department or the local governmental entity as provided in
8 this chapter. Such rules shall be adopted and administered so as to
9 give consideration to all purposes and policies set forth in RCW
10 76.09.010.

11 (2)(a) The board shall prepare proposed forest practices rules
12 (~~consistent with this section and chapter 34.05 RCW. In addition to~~
13 ~~any forest practices rules relating to water quality protection~~
14 ~~proposed by the board, the department of ecology may submit to the~~
15 ~~board~~) including proposed forest practices rules relating to water
16 quality protection.

17 (b)(i) Prior to initiating the rule-making process, the proposed
18 rules shall be submitted for review and comments to the department of
19 fish and wildlife, the department of ecology, and to the counties of
20 the state. After receipt of the proposed forest practices rules, the
21 department of fish and wildlife, the department of ecology, and the
22 counties of the state shall have thirty days in which to review and
23 submit comments to the board(~~(, and to the department of ecology with~~
24 ~~respect to its proposed rules relating to water quality protection)~~).

25 (ii) After the expiration of the thirty-day period, the board
26 (~~and the department of ecology~~) shall jointly hold one or more
27 hearings on the proposed rules pursuant to chapter 34.05 RCW. Any
28 county representative may propose specific forest practices rules
29 relating to problems existing within the county at the hearings.

30 (iii) The board may adopt (~~and the department of ecology may~~
31 ~~approve~~) such proposals if they find the proposals are consistent
32 with the purposes and policies of this chapter.

33 (3)(a) The board shall establish by rule a program for the
34 acquisition of riparian open space and critical habitat for threatened

1 or endangered species as designated by the board. Acquisition must be
2 a conservation easement. Lands eligible for acquisition are forest
3 lands within unconfined channel migration zones or forest lands
4 containing critical habitat for threatened or endangered species as
5 designated by the board. Once acquired, these lands may be held and
6 managed by the department, transferred to another state agency,
7 transferred to an appropriate local government agency, or transferred
8 to a private nonprofit nature conservancy corporation, as defined in
9 RCW 64.04.130, in fee or transfer of management obligation. The board
10 shall adopt rules governing the acquisition by the state or donation
11 to the state of such interest in lands including the right of refusal
12 if the lands are subject to unacceptable liabilities. The rules shall
13 include definitions of qualifying lands, priorities for acquisition,
14 and provide for the opportunity to transfer such lands with limited
15 warranties and with a description of boundaries that does not require
16 full surveys where the cost of securing the surveys would be
17 unreasonable in relation to the value of the lands conveyed. The
18 rules shall provide for the management of the lands for ecological
19 protection or fisheries enhancement. For the purposes of conservation
20 easements entered into under this section, the following apply:

21 (i) For conveyances of a conservation easement in which the
22 landowner conveys an interest in the trees only, the compensation must
23 include the timber value component, as determined by the cruised
24 volume of any timber located within the channel migration zone or
25 critical habitat for threatened or endangered species as designated by
26 the board, multiplied by the appropriate quality code stumpage value
27 for timber of the same species shown on the appropriate table used for
28 timber harvest excise tax purposes under RCW 84.33.091;

29 (ii) For conveyances of a conservation easement in which the
30 landowner conveys interests in both land and trees, the compensation
31 must include the timber value component in (a)(i) of this subsection
32 plus such portion of the land value component as determined just and
33 equitable by the department. The land value component must be the
34 acreage of qualifying channel migration zone or critical habitat for

1 threatened or endangered species as determined by the board, to be
2 conveyed, multiplied by the average per acre value of all commercial
3 forest land in western Washington or the average for eastern
4 Washington, whichever average is applicable to the qualifying lands.
5 The department must determine the western and eastern Washington
6 averages based on the land value tables established by RCW 84.33.140
7 and revised annually by the department of revenue.

8 (b) Subject to appropriations sufficient to cover the cost of such
9 an acquisition program and the related costs of administering the
10 program, the department must establish a conservation easement in land
11 that an owner tenders for purchase; provided that such lands have been
12 taxed as forest lands and are located within an unconfined channel
13 migration zone or contain critical habitat for threatened or
14 endangered species as designated by the board. Lands acquired under
15 this section shall become riparian or habitat open space. These
16 acquisitions shall not be deemed to trigger the compensating tax of
17 chapters 84.33 and 84.34 RCW.

18 (c) Instead of offering to sell interests in qualifying lands,
19 owners may elect to donate the interests to the state.

20 (d) Any acquired interest in qualifying lands by the state under
21 this section shall be managed as riparian open space or critical
22 habitat.

23
24 **Sec. 275.** RCW 76.09.050 and 2010 c 210 s 20 are each amended to
25 read as follows:

26 (1) The board shall establish by rule which forest practices shall
27 be included within each of the following classes:

28 Class I: Minimal or specific forest practices that have no direct
29 potential for damaging a public resource and that may be conducted
30 without submitting an application or a notification except that when
31 the regulating authority is transferred to a local governmental
32 entity, those Class I forest practices that involve timber harvesting
33 or road construction within "urban growth areas," designated pursuant
34

1 to chapter 36.70A RCW, are processed as Class IV forest practices, but
2 are not subject to environmental review under chapter 43.21C RCW;

3 Class II: Forest practices which have a less than ordinary
4 potential for damaging a public resource that may be conducted without
5 submitting an application and may begin five calendar days, or such
6 lesser time as the department may determine, after written
7 notification by the operator, in the manner, content, and form as
8 prescribed by the department, is received by the department. However,
9 the work may not begin until all forest practice fees required under
10 RCW 76.09.065 have been received by the department. Class II shall
11 not include forest practices:

12 (a) On lands platted after January 1, 1960, as provided in chapter
13 58.17 RCW or on lands that have or are being converted to another use;

14 (b) Which require approvals under the provisions of the hydraulics
15 act, RCW 77.55.021;

16 (c) Within "shorelines of the state" as defined in RCW 90.58.030;

17 (d) Excluded from Class II by the board; or

18 (e) Including timber harvesting or road construction within "urban
19 growth areas," designated pursuant to chapter 36.70A RCW, which are
20 Class IV;

21 Class III: Forest practices other than those contained in Class
22 I, II, or IV. A Class III application must be approved or disapproved
23 by the department within thirty calendar days from the date the
24 department receives the application. However, the applicant may not
25 begin work on that forest practice until all forest practice fees
26 required under RCW 76.09.065 have been received by the department;

27 Class IV: Forest practices other than those contained in Class I
28 or II: (a) On lands platted after January 1, 1960, as provided in
29 chapter 58.17 RCW, (b) on lands that have or are being converted to
30 another use, (c) on lands which, pursuant to RCW 76.09.070 as now or
31 hereafter amended, are not to be reforested because of the likelihood
32 of future conversion to urban development, (d) involving timber
33 harvesting or road construction on lands that are contained within
34 "urban growth areas," designated pursuant to chapter 36.70A RCW,

1 except where the forest landowner provides: (i) A written statement
2 of intent signed by the forest landowner not to convert to a use other
3 than commercial forest product operations for ten years, accompanied
4 by either a written forest management plan acceptable to the
5 department or documentation that the land is enrolled under the
6 provisions of chapter 84.33 RCW; or (ii) a conversion option harvest
7 plan approved by the local governmental entity and submitted to the
8 department as part of the application, and/or (e) which have a
9 potential for a substantial impact on the environment and therefore
10 require an evaluation by the department as to whether or not a
11 detailed statement must be prepared pursuant to the state
12 environmental policy act, chapter 43.21C RCW. Such evaluation shall
13 be made within ten days from the date the department receives the
14 application: PROVIDED, That nothing herein shall be construed to
15 prevent any local or regional governmental entity from determining
16 that a detailed statement must be prepared for an action pursuant to a
17 Class IV forest practice taken by that governmental entity concerning
18 the land on which forest practices will be conducted. A Class IV
19 application must be approved or disapproved by the department within
20 thirty calendar days from the date the department receives the
21 application, unless the department determines that a detailed
22 statement must be made, in which case the application must be approved
23 or disapproved by the department within sixty calendar days from the
24 date the department receives the application, unless the commissioner
25 of public lands, through the promulgation of a formal order,
26 determines that the process cannot be completed within such period.
27 However, the applicant may not begin work on that forest practice
28 until all forest practice fees required under RCW 76.09.065 have been
29 received by the department.

30 Forest practices under Classes I, II, and III are exempt from the
31 requirements for preparation of a detailed statement under the state
32 environmental policy act.

33 (2) Except for those forest practices being regulated by local
34 governmental entities as provided elsewhere in this chapter, no Class

1 II, Class III, or Class IV forest practice shall be commenced or
2 continued after January 1, 1975, unless the department has received a
3 notification with regard to a Class II forest practice or approved an
4 application with regard to a Class III or Class IV forest practice
5 containing all information required by RCW 76.09.060 as now or
6 hereafter amended. However, in the event forest practices regulations
7 necessary for the scheduled implementation of this chapter and RCW
8 90.48.420 have not been adopted in time to meet such schedules, the
9 department shall have the authority to regulate forest practices and
10 approve applications on such terms and conditions consistent with this
11 chapter and RCW 90.48.420 and the purposes and policies of RCW
12 76.09.010 until applicable forest practices regulations are in effect.

13 (3) Except for those forest practices being regulated by local
14 governmental entities as provided elsewhere in this chapter, if a
15 notification or application is delivered in person to the department
16 by the operator or the operator's agent, the department shall
17 immediately provide a dated receipt thereof. In all other cases, the
18 department shall immediately mail a dated receipt to the operator.

19 (4) Except for those forest practices being regulated by local
20 governmental entities as provided elsewhere in this chapter, forest
21 practices shall be conducted in accordance with the forest practices
22 regulations, orders and directives as authorized by this chapter or
23 the forest practices regulations, and the terms and conditions of any
24 approved applications.

25 (5) Except for those forest practices being regulated by local
26 governmental entities as provided elsewhere in this chapter, the
27 department of natural resources shall notify the applicant in writing
28 of either its approval of the application or its disapproval of the
29 application and the specific manner in which the application fails to
30 comply with the provisions of this section or with the forest
31 practices regulations. Except as provided otherwise in this section,
32 if the department fails to either approve or disapprove an application
33 or any portion thereof within the applicable time limit, the
34 application shall be deemed approved and the operation may be

1 commenced: PROVIDED, That this provision shall not apply to
2 applications which are neither approved nor disapproved pursuant to
3 the provisions of subsection (7) of this section: PROVIDED, FURTHER,
4 That if seasonal field conditions prevent the department from being
5 able to properly evaluate the application, the department may issue an
6 approval conditional upon further review within sixty days: PROVIDED,
7 FURTHER, That the department shall have until April 1, 1975, to
8 approve or disapprove an application involving forest practices
9 allowed to continue to April 1, 1975, under the provisions of
10 subsection (2) of this section. Upon receipt of any notification or
11 any satisfactorily completed application the department shall in any
12 event no later than two business days after such receipt transmit a
13 copy to the ~~((departments of ecology and fish and wildlife, and to~~
14 ~~the))~~ county, city, or town in whose jurisdiction the forest practice
15 is to be commenced. ~~((Any comments by such agencies shall be directed~~
16 ~~to the department of natural resources.))~~

17 (6) For those forest practices regulated by the board and the
18 department, if the county, city, or town believes that an application
19 is inconsistent with this chapter, the forest practices regulations,
20 or any local authority consistent with RCW 76.09.240 as now or
21 hereafter amended, it may so notify the department and the applicant,
22 specifying its objections.

23 (7) For those forest practices regulated by the board and the
24 department, the department shall not approve portions of applications
25 to which a county, city, or town objects if:

26 (a) The department receives written notice from the county, city,
27 or town of such objections within fourteen business days from the time
28 of transmittal of the application to the county, city, or town, or one
29 day before the department acts on the application, whichever is later;
30 and

31 (b) The objections relate to lands either:

32 (i) Platted after January 1, 1960, as provided in chapter 58.17
33 RCW; or

34 (ii) On lands that have or are being converted to another use.

1 The department shall either disapprove those portions of such
2 application or appeal the county, city, or town objections to the
3 appeals board. If the objections related to subparagraphs (b)(i) and
4 (ii) of this subsection are based on local authority consistent with
5 RCW 76.09.240 as now or hereafter amended, the department shall
6 disapprove the application until such time as the county, city, or
7 town consents to its approval or such disapproval is reversed on
8 appeal. The applicant shall be a party to all department appeals of
9 county, city, or town objections. Unless the county, city, or town
10 either consents or has waived its rights under this subsection, the
11 department shall not approve portions of an application affecting such
12 lands until the minimum time for county, city, or town objections has
13 expired.

14 (8) For those forest practices regulated by the board and the
15 department, in addition to any rights under the above paragraph, the
16 county, city, or town may appeal any department approval of an
17 application with respect to any lands within its jurisdiction. The
18 appeals board may suspend the department's approval in whole or in
19 part pending such appeal where there exists potential for immediate
20 and material damage to a public resource.

21 (9) For those forest practices regulated by the board and the
22 department, appeals under this section shall be made to the appeals
23 board in the manner and time provided in RCW 76.09.205. In such
24 appeals there shall be no presumption of correctness of either the
25 county, city, or town or the department position.

26 (10) For those forest practices regulated by the board and the
27 department, the department shall, within four business days notify the
28 county, city, or town of all notifications, approvals, and
29 disapprovals of an application affecting lands within the county,
30 city, or town, except to the extent the county, city, or town has
31 waived its right to such notice.

32 (11) For those forest practices regulated by the board and the
33 department, a county, city, or town may waive in whole or in part its
34

1 rights under this section, and may withdraw or modify any such waiver,
2 at any time by written notice to the department.

3 (12) Notwithstanding subsections (2) through (5) of this section,
4 forest practices applications or notifications are not required for
5 exotic insect and disease control operations conducted in accordance
6 with RCW 76.09.060(8) where eradication can reasonably be expected.

7

8 **Sec. 276.** RCW 76.09.060 and 2007 c 480 s 11 and 2007 c 106 s 1
9 are each reenacted and amended to read as follows:

10 (1) The department shall prescribe the form and contents of the
11 notification and application. The forest practices rules shall
12 specify by whom and under what conditions the notification and
13 application shall be signed or otherwise certified as acceptable.
14 Activities conducted by the department or a contractor under the
15 direction of the department under the provisions of RCW 76.04.660,
16 shall be exempt from the landowner signature requirement on any forest
17 practice application required to be filed. The application or
18 notification shall be delivered in person to the department, sent by
19 first-class mail to the department or electronically filed in a form
20 defined by the department. The form for electronic filing shall be
21 readily convertible to a paper copy, which shall be available to the
22 public pursuant to chapter 42.56 RCW. The information required may
23 include, but is not limited to:

24 (a) Name and address of the forest landowner, timber owner, and
25 operator;

26 (b) Description of the proposed forest practice or practices to be
27 conducted;

28 (c) Legal description and tax parcel identification numbers of the
29 land on which the forest practices are to be conducted;

30 (d) Planimetric and topographic maps showing location and size of
31 all lakes and streams and other public waters in and immediately
32 adjacent to the operating area and showing all existing and proposed
33 roads and major tractor roads;

34

1 (e) Description of the silvicultural, harvesting, or other forest
2 practice methods to be used, including the type of equipment to be
3 used and materials to be applied;

4 (f) Proposed plan for reforestation and for any revegetation
5 necessary to reduce erosion potential from roadsides and yarding
6 roads, as required by the forest practices rules;

7 (g) Soil, geological, and hydrological data with respect to forest
8 practices;

9 (h) The expected dates of commencement and completion of all
10 forest practices specified in the application;

11 (i) Provisions for continuing maintenance of roads and other
12 construction or other measures necessary to afford protection to
13 public resources;

14 (j) An affirmation that the statements contained in the
15 notification or application are true; and

16 (k) All necessary application or notification fees.

17 (2) Long range plans may be submitted to the department for review
18 and consultation.

19 (3) The application for a forest practice or the notification of a
20 forest practice is subject to the reforestation requirement of RCW
21 76.09.070.

22 (a) If the application states that any land will be or is intended
23 to be converted:

24 (i) The reforestation requirements of this chapter and of the
25 forest practices rules shall not apply if the land is in fact
26 converted unless applicable alternatives or limitations are provided
27 in forest practices rules issued under RCW 76.09.070;

28 (ii) Completion of such forest practice operations shall be deemed
29 conversion of the lands to another use for purposes of chapters 84.33
30 and 84.34 RCW unless the conversion is to a use permitted under a
31 current use tax agreement permitted under chapter 84.34 RCW;

32 (iii) The forest practices described in the application are
33 subject to applicable county, city, town, and regional governmental
34

1 authority permitted under RCW 76.09.240 as well as the forest
2 practices rules.

3 (b) Except as provided elsewhere in this section, if the landowner
4 harvests without an approved application or notification or the
5 landowner does not state that any land covered by the application or
6 notification will be or is intended to be converted, and the
7 department or the county, city, town, or regional governmental entity
8 becomes aware of conversion activities to a use other than commercial
9 timber operations, as that term is defined in RCW 76.09.020, then the
10 department shall send to (~~the department of ecology and~~) the
11 appropriate county, city, town, and regional governmental entities the
12 following documents:

13 (i) A notice of a conversion to nonforestry use;

14 (ii) A copy of the applicable forest practices application or
15 notification, if any; and

16 (iii) Copies of any applicable outstanding final orders or
17 decisions issued by the department related to the forest practices
18 application or notification.

19 (c) Failure to comply with the reforestation requirements
20 contained in any final order or decision shall constitute a removal of
21 designation under the provisions of RCW 84.33.140, and a change of use
22 under the provisions of RCW 84.34.080, and, if applicable, shall
23 subject such lands to the payments and/or penalties resulting from
24 such removals or changes.

25 (d) Conversion to a use other than commercial forest product
26 operations within six years after approval of the forest practices
27 application or notification without the consent of the county, city,
28 or town shall constitute a violation of each of the county, municipal
29 city, town, and regional authorities to which the forest practice
30 operations would have been subject if the application had stated an
31 intent to convert.

32 (e) Land that is the subject of a notice of conversion to a
33 nonforestry use produced by the department and sent to the department
34

1 of ecology and a local government under this subsection is subject to
2 the development prohibition and conditions provided in RCW 76.09.460.

3 (f) Landowners who have not stated an intent to convert the land
4 covered by an application or notification and who decide to convert
5 the land to a nonforestry use within six years of receiving an
6 approved application or notification must do so in a manner consistent
7 with RCW 76.09.470.

8 (g) The application or notification must include a statement
9 requiring an acknowledgment by the forest landowner of his or her
10 intent with respect to conversion and acknowledging that he or she is
11 familiar with the effects of this subsection.

12 (4) Whenever an approved application authorizes a forest practice
13 which, because of soil condition, proximity to a water course or other
14 unusual factor, has a potential for causing material damage to a
15 public resource, as determined by the department, the applicant shall,
16 when requested on the approved application, notify the department two
17 days before the commencement of actual operations.

18 (5) Before the operator commences any forest practice in a manner
19 or to an extent significantly different from that described in a
20 previously approved application or notification, there shall be
21 submitted to the department a new application or notification form in
22 the manner set forth in this section.

23 (6) Except as provided in RCW 76.09.350(4), the notification to or
24 the approval given by the department to an application to conduct a
25 forest practice shall be effective for a term of two years from the
26 date of approval or notification and shall not be renewed unless a new
27 application is filed and approved or a new notification has been
28 filed. At the option of the applicant, an application or notification
29 may be submitted to cover a single forest practice or a number of
30 forest practices within reasonable geographic or political boundaries
31 as specified by the department. An application or notification that
32 covers more than one forest practice may have an effective term of
33 more than two years. The board shall adopt rules that establish
34 standards and procedures for approving an application or notification

1 that has an effective term of more than two years. Such rules shall
2 include extended time periods for application or notification approval
3 or disapproval. On an approved application with a term of more than
4 two years, the applicant shall inform the department before commencing
5 operations.

6 (7) Notwithstanding any other provision of this section, no prior
7 application or notification shall be required for any emergency forest
8 practice necessitated by fire, flood, windstorm, earthquake, or other
9 emergency as defined by the board, but the operator shall submit an
10 application or notification, whichever is applicable, to the
11 department within forty-eight hours after commencement of such
12 practice or as required by local regulations.

13 (8) Forest practices applications or notifications are not
14 required for forest practices conducted to control exotic forest
15 insect or disease outbreaks, when conducted by or under the direction
16 of the department of agriculture in carrying out an order of the
17 governor or director of the department of agriculture to implement
18 pest control measures as authorized under chapter 17.24 RCW, and are
19 not required when conducted by or under the direction of the
20 department in carrying out emergency measures under a forest health
21 emergency declaration by the commissioner of public lands as provided
22 in RCW 76.06.130.

23 (a) For the purposes of this subsection, exotic forest insect or
24 disease has the same meaning as defined in RCW 76.06.020.

25 (b) In order to minimize adverse impacts to public resources,
26 control measures must be based on integrated pest management, as
27 defined in RCW 17.15.010, and must follow forest practices rules
28 relating to road construction and maintenance, timber harvest, and
29 forest chemicals, to the extent possible without compromising control
30 objectives.

31 (c) Agencies conducting or directing control efforts must provide
32 advance notice to the appropriate regulatory staff of the department
33 of the operations that would be subject to exemption from forest
34 practices application or notification requirements.

1 (d) When the appropriate regulatory staff of the department are
2 notified under (c) of this subsection, they must consult with the
3 landowner, interested agencies, and affected tribes, and assist the
4 notifying agencies in the development of integrated pest management
5 plans that comply with forest practices rules as required under (b) of
6 this subsection.

7 (e) Nothing under this subsection relieves agencies conducting or
8 directing control efforts from requirements of the federal clean water
9 act as administered by the department of ecology under RCW 90.48.260.

10 (f) Forest lands where trees have been cut as part of an exotic
11 forest insect or disease control effort under this subsection are
12 subject to reforestation requirements under RCW 76.09.070.

13 (g) The exemption from obtaining approved forest practices
14 applications or notifications does not apply to forest practices
15 conducted after the governor, the director of the department of
16 agriculture, or the commissioner of public lands have declared that an
17 emergency no longer exists because control objectives have been met,
18 that there is no longer an imminent threat, or that there is no longer
19 a good likelihood of control.

20
21 **Sec. 277.** RCW 76.09.100 and 1975 1st ex.s. c 200 s 7 are each
22 amended to read as follows:

23 If the department (~~(of ecology)~~) determines that a person has
24 failed to comply with the forest practices regulations relating to
25 water quality protection, and (~~(that the department of natural~~
26 ~~resources has not issued a stop work order or notice to comply, the~~
27 ~~department of ecology shall inform the department thereof. If)~~) the
28 department of natural resources fails to take authorized enforcement
29 action within twenty-four hours under RCW 76.09.080, 76.09.090,
30 76.09.120, or 76.09.130, the (~~(department of ecology may petition to~~
31 ~~the chairman)~~) chair of the appeals board(~~(, who)~~) shall, within
32 forty- eight hours, either deny (~~(the petition)~~) further consideration
33 or direct the department of natural resources to immediately issue a
34 stop work order or notice to comply, or to impose a penalty. No civil

1 or criminal penalties shall be imposed for past actions or omissions
2 if such actions or omissions were conducted pursuant to an approval or
3 directive of the department of natural resources.

4
5 **Sec. 278.** RCW 76.09.150 and 2000 c 11 s 7 are each amended to
6 read as follows:

7 (1) The department shall make inspections of forest lands, before,
8 during and after the conducting of forest practices as necessary for
9 the purpose of ensuring compliance with this chapter and the forest
10 practices rules and to ensure that no material damage occurs to the
11 natural resources of this state as a result of such practices.

12 (2) Any duly authorized representative of the department shall
13 have the right to enter upon forest land at any reasonable time to
14 enforce the provisions of this chapter and the forest practices rules.

15 (3) The department (~~(or the department of ecology)~~) may apply for
16 an administrative inspection warrant to either Thurston county
17 superior court, or the superior court in the county in which the
18 property is located. An administrative inspection warrant may be
19 issued where:

20 (a) The department has attempted an inspection of forest lands
21 under this chapter to ensure compliance with this chapter and the
22 forest practices rules or to ensure that no potential or actual
23 material damage occurs to the natural resources of this state, and
24 access to all or part of the forest lands has been actually or
25 constructively denied; or

26 (b) The department has reasonable cause to believe that a
27 violation of this chapter or of rules adopted under this chapter is
28 occurring or has occurred.

29 (4) In connection with any watershed analysis, any review of a
30 pending application by an identification team appointed by the
31 department, any compliance studies, any effectiveness monitoring, or
32 other research that has been agreed to by a landowner, the department
33 may invite representatives of other agencies, tribes, and interest
34 groups to accompany a department representative and, at the

1 landowner's election, the landowner, on any such inspections.
2 Reasonable efforts shall be made by the department to notify the
3 landowner of the persons being invited onto the property and the
4 purposes for which they are being invited.

5
6 **Sec. 279.** RCW 76.09.260 and 1974 ex.s. c 137 s 26 are each
7 amended to read as follows:

8 The department shall represent the state's interest in matters
9 pertaining to forestry and forest practices, including federal matters
10 and, except as otherwise provided in RCW 90.48.260, matters relating
11 to representing the state for the purposes of the federal water
12 pollution control act as it relates to forest practices, and may
13 consult with and cooperate with the federal government and other
14 states, as well as other public agencies, in the study and enhancement
15 of forestry and forest practices. The department is authorized to
16 accept, receive, disburse, and administer grants or other funds or
17 gifts from any source, including private individuals or agencies, the
18 federal government, and other public agencies for the purposes of
19 carrying out the provisions of this chapter.

20 ~~((Nothing in this chapter shall modify the designation of the~~
21 ~~department of ecology as the agency representing the state for all~~
22 ~~purposes of the Federal Water Pollution Control Act.))~~

23
24 **Sec. 280.** RCW 76.09.470 and 2007 c 106 s 3 are each amended to
25 read as follows:

26 (1) If a landowner who did not state an intent to convert his or
27 her land to a nonforestry use decides to convert his or her land to a
28 nonforestry use within six years of receiving an approved forest
29 practices application or notification under this chapter, the
30 landowner must:

31 (a) Stop all forest practices activities on the parcels subject to
32 the proposed land use conversion to a nonforestry use;

33
34

1 (b) Contact the (~~department of ecology and the~~) applicable
2 county, city, town, or regional governmental entity to begin the
3 permitting process; and

4 (c) Notify the department and withdraw any applicable applications
5 or notifications or request a new application for conversion.

6 (2) Upon being contacted by a landowner under this section, the
7 county, city, town, or regional governmental entity must:

8 (a) Notify the department and request from the department the
9 status of any applicable forest practices applications, notifications,
10 or final orders or decisions; and

11 (b) Complete the following activities:

12 (i) Require that the landowner be in full compliance with chapter
13 43.21C RCW, if applicable;

14 (ii) Receive notification from the department that the landowner
15 has resolved any outstanding final orders or decisions issued by the
16 department; and

17 (iii) Make a determination as to whether or not the condition of
18 the land in question is in full compliance with local ordinances and
19 regulations. If full compliance is not found, a mitigation plan to
20 address violations of local ordinances or regulations must be required
21 for the parcel in question by the county, city, town, or regional
22 governmental entity. Required mitigation plans must be prepared by
23 the landowner and approved by the county, city, town, or regional
24 governmental entity. Once approved, the mitigation plan must be
25 implemented by the landowner. Mitigation measures that may be
26 required include, but are not limited to, revegetation requirements to
27 plant and maintain trees of sufficient maturity and appropriate
28 species composition to restore critical area and buffer function or to
29 be in compliance with applicable local government regulations.

30

31 **Sec. 281.** RCW 90.64.010 and 2009 c 143 s 2 are each amended to
32 read as follows:

33

34

1 (~~Unless the context clearly requires otherwise,~~) The definitions
2 in this section apply throughout this chapter unless the context
3 clearly requires otherwise.

4 (1) "Advisory and oversight committee" means a balanced committee
5 of agency, dairy farm, and interest group representatives convened to
6 provide oversight and direction to the dairy nutrient management
7 program.

8 (2) "Bypass" means the intentional diversion of waste streams from
9 any portion of a treatment facility.

10 (3) "Catastrophic" means a tornado, hurricane, earthquake, flood,
11 or other extreme condition that causes an overflow from a required
12 waste retention structure.

13 (4) "Certification" means:

14 (a) The acknowledgment by a local conservation district that a
15 dairy producer has constructed or otherwise put in place the elements
16 necessary to implement his or her dairy nutrient management plan; and

17 (b) The acknowledgment by a dairy producer that he or she is
18 managing dairy nutrients as specified in his or her approved dairy
19 nutrient management plan.

20 (5) "Chronic" means a series of wet weather events that precludes
21 the proper operation of a dairy nutrient management system that is
22 designed for the current herd size.

23 (6) "Conservation commission" or "commission" means the
24 conservation commission under chapter 89.08 RCW.

25 (7) "Conservation districts" or "district" means a subdivision of
26 state government organized under chapter 89.08 RCW.

27 (8) "Concentrated dairy animal feeding operation" means a dairy
28 animal feeding operation subject to regulation under this chapter
29 which the director designates under RCW 90.64.020 or meets the
30 following criteria:

31 (a) Has more than seven hundred mature dairy cows, whether milked
32 or dry cows, that are confined; or

33 (b) Has more than two hundred head of mature dairy cattle, whether
34 milked or dry cows, that are confined and either:

1 (i) From which pollutants are discharged into navigable waters
2 through a manmade ditch, flushing system, or other similar manmade
3 device; or

4 (ii) From which pollutants are discharged directly into surface or
5 ground waters of the state that originate outside of and pass over,
6 across, or through the facility or otherwise come into direct contact
7 with the animals confined in the operation.

8 (9) "Dairy animal feeding operation" means a lot or facility where
9 the following conditions are met:

10 (a) Dairy animals that have been, are, or will be stabled or
11 confined and fed for a total of forty-five days or more in any twelve-
12 month period; and

13 (b) Crops, vegetation forage growth, or postharvest residues are
14 not sustained in the normal growing season over any portion of the lot
15 or facility. Two or more dairy animal feeding operations under common
16 ownership are considered, for the purposes of this chapter, to be a
17 single dairy animal feeding operation if they adjoin each other or if
18 they use a common area for land application of wastes.

19 (10) "Dairy farm" means any farm that is licensed to produce milk
20 under chapter 15.36 RCW.

21 (11) "Dairy nutrient" means any organic waste produced by dairy
22 cows or a dairy farm operation.

23 (12) "Dairy nutrient management plan" means a plan meeting the
24 requirements established under RCW 90.64.026.

25 (13) "Dairy producer" means a person who owns or operates a dairy
26 farm.

27 (14) "Department" means the department of (~~ecology under chapter~~
28 ~~43.21A RCW~~) agriculture.

29 (15) "Director" means the director of the department (~~of~~
30 ~~ecology~~) or his or her designee.

31 (16) "Upset" means an exceptional incident in which there is an
32 unintentional and temporary noncompliance with technology-based permit
33 effluent limitations because of factors beyond the reasonable control
34 of the dairy. An upset does not include noncompliance to the extent

1 caused by operational error, improperly designed treatment facilities,
2 inadequate treatment facilities, lack of preventive maintenance, or
3 careless or improper operation.

4 (17) "Violation" means the following acts or omissions:

5 (a) A discharge of pollutants into the waters of the state, except
6 those discharges that are due to a chronic or catastrophic event, or
7 to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as
8 provided in 40 C.F.R. Sec. 122.41, and that occur when:

9 (i) A dairy producer has a current national pollutant discharge
10 elimination system permit with a wastewater system designed, operated,
11 and maintained for the current herd size and that contains all
12 process-generated wastewater plus average annual precipitation minus
13 evaporation plus contaminated storm water runoff from a twenty-five
14 year, twenty-four hour rainfall event for that specific location, and
15 the dairy producer has complied with all permit conditions, including
16 dairy nutrient management plan conditions for appropriate land
17 application practices; or

18 (ii) A dairy producer does not have a national pollutant discharge
19 elimination system permit, but has complied with all of the elements
20 of a dairy nutrient management plan that: Prevents the discharge of
21 pollutants to waters of the state, is commensurate with the dairy
22 producer's current herd size, and is approved and certified under RCW
23 90.64.026;

24 (b) Failure to register as required under RCW 90.64.017;

25 (c)(i) Until July 1, 2011, failure to keep for a period of three
26 years all records necessary to show that applications of nutrients to
27 the land were within acceptable agronomic rates, unless otherwise
28 required by law; and

29 (ii) Beginning July 1, 2011, failure to keep for a period of five
30 years all records necessary to show that applications of nutrients to
31 the land were within acceptable agronomic rates;

32 (d) The lack of an approved dairy nutrient management plan by July
33 1, 2002; or

34

1 (e) The lack of a certified dairy nutrient management plan for a
2 dairy farm after December 31, 2003.

3
4 **Sec. 282.** RCW 90.64.020 and 1993 c 221 s 3 are each amended to
5 read as follows:

6 (1) The director of the department (~~(of ecology)~~) may designate
7 any dairy animal feeding operation as a concentrated dairy animal
8 feeding operation upon determining that it is a significant
9 contributor of pollution to the surface or ground waters of the state.
10 In making this designation the director shall consider the following
11 factors:

12 (a) The size of the animal feeding operation and the amount of
13 wastes reaching waters of the state;

14 (b) The location of the animal feeding operation relative to
15 waters of the state;

16 (c) The means of conveyance of animal wastes and process waters
17 into the waters of the state;

18 (d) The slope, vegetation, rainfall, and other factors affecting
19 the likelihood or frequency of discharge of animal wastes and process
20 waste waters into the waters of the state; and

21 (e) Other relevant factors as established by the department by
22 rule.

23 (2) A notice of intent to apply for a permit shall not be required
24 from a concentrated dairy animal feeding operation designated under
25 this section until the director has conducted an on-site inspection of
26 the operation and determined that the operation should and could be
27 regulated under the permit program.

28
29 **Sec. 283.** RCW 90.64.170 and 2005 c 510 s 1 are each amended to
30 read as follows:

31 (1) The legislature finds that a livestock nutrient management
32 program is essential to protecting the quality of the waters of the
33 state and ensuring a healthy and productive livestock industry.

1 (2) The department (~~(s of agriculture and ecology)~~) shall examine
2 (~~(their)~~) its current statutory authorities and provide the
3 legislature with recommendations for statutory changes to fully
4 implement a livestock nutrient management program within the
5 department (~~(of agriculture)~~) for concentrated animal feeding
6 operations, animal feeding operations, and dairies, as authorized in
7 RCW 90.48.260 (~~(, 90.64.813,)~~) and 90.64.901. (~~(In developing~~
8 ~~recommended statutory changes, the departments shall consult with the~~
9 ~~livestock nutrient management program development and oversight~~
10 ~~committee created in RCW 90.64.813.)~~) The recommendations must be
11 submitted to the legislature by the department (~~(s of agriculture and~~
12 ~~ecology)~~) prior to applying to the environmental protection agency for
13 delegated authority to administer the CAFO portion of the national
14 pollutant discharge elimination system permit program under the
15 federal clean water act.

16 (3) For purposes of chapter 510, Laws of 2005, animal feeding
17 operations (AFOs) and concentrated animal feeding operations (CAFOs)
18 have the same meaning as defined in 40 C.F.R. 122.23.

19 (4) This section applies to all operations that meet the
20 definition of an AFO. This section does not apply to true pasture and
21 rangeland operations that do not meet the definition of AFO, however,
22 such operations may have confinement areas that may qualify as an AFO.

23

24 **Sec. 284.** RCW 90.48.260 and 2007 c 341 s 55 are each amended to
25 read as follows:

26 (1) Unless otherwise designated by law, the department of ecology
27 is hereby designated as the state water pollution control agency for
28 all purposes of the federal clean water act as it exists on February
29 4, 1987, and is hereby authorized to participate fully in the programs
30 of the act as well as to take all action necessary to secure to the
31 state the benefits and to meet the requirements of that act. (~~(With~~
32 ~~regard to the national estuary program established by section 320 of~~
33 ~~that act, the department shall exercise its responsibility jointly~~
34 ~~with the Puget Sound partnership, created in RCW 90.71.210.)~~)

1 (2)(a) The department of ecology (~~(may)~~) shall delegate its
2 authority under this chapter, including its national pollutant
3 discharge elimination permit system authority and other duties
4 regarding water quality to the following agencies for the following
5 programs:

6 (i) Animal feeding operations and concentrated animal feeding
7 operations(~~(,)~~) to the department of agriculture; and

8 (ii) Forest practices to the department of natural resources and
9 the forest practices board.

10 (b) All delegations of authority must be executed through a
11 memorandum of understanding. Until any such delegation receives
12 federal approval, the department of agriculture's adoption or issuance
13 of animal feeding operation and concentrated animal feeding operation
14 rules, permits, programs, and directives pertaining to water quality
15 and the adoption of forest practices rules, permits programs, or
16 directions pertaining to water quality shall be accomplished after
17 reaching agreement with the director of the department of ecology.

18 (c) Adoption or issuance and implementation of this subsection
19 shall be accomplished so that compliance with such animal feeding
20 operation and concentrated animal feeding operation and forest
21 practices rules, permits, programs, and directives will achieve
22 compliance with all federal and state water pollution control laws.

23 (3) The powers granted (~~(herein)~~) by this section include, among
24 others, and notwithstanding any other provisions of chapter 90.48 RCW
25 or otherwise, the following:

26 (~~(1)~~) (a) Complete authority to establish and administer a
27 comprehensive state point source waste discharge or pollution
28 discharge elimination permit program which will enable the department
29 to qualify for full participation in any national waste discharge or
30 pollution discharge elimination permit system and will allow the
31 department to be the sole agency issuing permits required by such
32 national system operating in the state of Washington subject to the
33 provisions of RCW 90.48.262(2). Program elements authorized herein
34 may include, but are not limited to: (~~(a)~~) (i) Effluent treatment

1 and limitation requirements together with timing requirements related
2 thereto; ~~((b))~~ (ii) applicable receiving water quality standards
3 requirements; ~~((e))~~ (iii) requirements of standards of performance
4 for new sources; ~~((d))~~ (iv) pretreatment requirements; ~~((e))~~ (v)
5 termination and modification of permits for cause; ~~((f))~~ (vi)
6 requirements for public notices and opportunities for public hearings;
7 ~~((g))~~ (vii) appropriate relationships with the secretary of the army
8 in the administration of ~~((his))~~ the secretary of the army's
9 responsibilities which relate to anchorage and navigation, with the
10 administrator of the environmental protection agency in the
11 performance of ~~((his))~~ the administrator's duties, and with other
12 governmental officials under the federal clean water act; ~~((h))~~
13 (viii) requirements for inspection, monitoring, entry, and reporting;
14 ~~((i))~~ (ix) enforcement of the program through penalties, emergency
15 powers, and criminal sanctions; ~~((j))~~ (x) a continuing planning
16 process; and ~~((k))~~ (xi) user charges.

17 ~~((2))~~ (b) The power to establish and administer state programs
18 in a manner which will ~~((insure))~~ ensure the procurement of moneys,
19 whether in the form of grants, loans, or otherwise; to assist in the
20 construction, operation, and maintenance of various water pollution
21 control facilities and works; and the administering of various state
22 water pollution control management, regulatory, and enforcement
23 programs.

24 ~~((3))~~ (c) The power to develop and implement appropriate
25 programs pertaining to continuing planning processes, area-wide waste
26 treatment management plans, and basin planning.

27 (4) The governor shall have authority to perform those actions
28 required of him or her by the federal clean water act.

29
30 **Sec. 285.** RCW 77.55.021 and 2010 c 210 s 27 are each amended to
31 read as follows:

32 (1) Except as provided in RCW 77.55.031, 77.55.051, ~~((and))~~
33 77.55.041, and section 13 of this act, in the event that any person or
34 government agency desires to undertake a hydraulic project, the person

1 or government agency shall, before commencing work thereon, secure the
2 approval of the department in the form of a permit as to the adequacy
3 of the means proposed for the protection of fish life.

4 (2) A complete written application for a permit may be submitted
5 in person or by registered mail and must contain the following:

6 (a) General plans for the overall project;

7 (b) Complete plans and specifications of the proposed construction
8 or work within the mean higher high water line in saltwater or within
9 the ordinary high water line in freshwater;

10 (c) Complete plans and specifications for the proper protection of
11 fish life; and

12 (d) Notice of compliance with any applicable requirements of the
13 state environmental policy act, unless otherwise provided for in this
14 chapter.

15 (3)(a) Protection of fish life is the only ground upon which
16 approval of a permit may be denied or conditioned. Approval of a
17 permit may not be unreasonably withheld or unreasonably conditioned.
18 Except as provided in this subsection and subsections (8), (10), and
19 (12) of this section, the department has forty-five calendar days upon
20 receipt of a complete application to grant or deny approval of a
21 permit. The forty-five day requirement is suspended if:

22 (i) After ten working days of receipt of the application, the
23 applicant remains unavailable or unable to arrange for a timely field
24 evaluation of the proposed project;

25 (ii) The site is physically inaccessible for inspection;

26 (iii) The applicant requests a delay; or

27 (iv) The department is issuing a permit for a storm water
28 discharge and is complying with the requirements of RCW
29 77.55.161(3)(b).

30 (b) Immediately upon determination that the forty-five day period
31 is suspended, the department shall notify the applicant in writing of
32 the reasons for the delay.

33 (c) The period of forty-five calendar days may be extended if the
34 permit is part of a multiagency permit streamlining effort and all

1 participating permitting agencies and the permit applicant agree to an
2 extended timeline longer than forty-five calendar days.

3 (4) If the department denies approval of a permit, the department
4 shall provide the applicant a written statement of the specific
5 reasons why and how the proposed project would adversely affect fish
6 life.

7 (a) Except as provided in (b) of this subsection, issuance,
8 denial, conditioning, or modification of a permit shall be appealable
9 to the board within thirty days from the date of receipt of the
10 decision as provided in RCW 43.21B.230.

11 (b) Issuance, denial, conditioning, or modification of a permit
12 may be informally appealed to the department within thirty days from
13 the date of receipt of the decision. Requests for informal appeals
14 must be filed in the form and manner prescribed by the department by
15 rule. A permit decision that has been informally appealed to the
16 department is appealable to the board within thirty days from the date
17 of receipt of the department's decision on the informal appeal.

18 (5)(a) The permittee must demonstrate substantial progress on
19 construction of that portion of the project relating to the permit
20 within two years of the date of issuance.

21 (b) Approval of a permit is valid for a period of up to five years
22 from the date of issuance, except as provided in (c) of this
23 subsection and in RCW 77.55.151.

24 (c) A permit remains in effect without need for periodic renewal
25 for hydraulic projects that divert water for agricultural irrigation
26 or stock watering purposes and that involve seasonal construction or
27 other work. A permit for streambank stabilization projects to protect
28 farm and agricultural land as defined in RCW 84.34.020 remains in
29 effect without need for periodic renewal if the problem causing the
30 need for the streambank stabilization occurs on an annual or more
31 frequent basis. The permittee must notify the appropriate agency
32 before commencing the construction or other work within the area
33 covered by the permit.

34

1 (6) The department may, after consultation with the permittee,
2 modify a permit due to changed conditions. The modification is
3 appealable as provided in subsection (4) of this section. For
4 hydraulic projects that divert water for agricultural irrigation or
5 stock watering purposes, or when the hydraulic project or other work
6 is associated with streambank stabilization to protect farm and
7 agricultural land as defined in RCW 84.34.020, the burden is on the
8 department to show that changed conditions warrant the modification in
9 order to protect fish life.

10 (7) A permittee may request modification of a permit due to
11 changed conditions. The request must be processed within forty-five
12 calendar days of receipt of the written request. A decision by the
13 department is appealable as provided in subsection (4) of this
14 section. For hydraulic projects that divert water for agricultural
15 irrigation or stock watering purposes, or when the hydraulic project
16 or other work is associated with streambank stabilization to protect
17 farm and agricultural land as defined in RCW 84.34.020, the burden is
18 on the permittee to show that changed conditions warrant the requested
19 modification and that such a modification will not impair fish life.

20 (8)(a) The department, the county legislative authority, or the
21 governor may declare and continue an emergency. If the county
22 legislative authority declares an emergency under this subsection, it
23 shall immediately notify the department. A declared state of
24 emergency by the governor under RCW 43.06.010 shall constitute a
25 declaration under this subsection.

26 (b) The department, through its authorized representatives, shall
27 issue immediately, upon request, oral approval for a stream crossing,
28 or work to remove any obstructions, repair existing structures,
29 restore streambanks, protect fish life, or protect property threatened
30 by the stream or a change in the stream flow without the necessity of
31 obtaining a written permit prior to commencing work. Conditions of
32 the emergency oral permit must be established by the department and
33 reduced to writing within thirty days and complied with as provided
34 for in this chapter.

1 (c) The department may not require the provisions of the state
2 environmental policy act, chapter 43.21C RCW, to be met as a condition
3 of issuing a permit under this subsection.

4 (9) All state and local agencies with authority under this chapter
5 to issue permits or other authorizations in connection with emergency
6 water withdrawals and facilities authorized under RCW 43.83B.410 shall
7 expedite the processing of such permits or authorizations in keeping
8 with the emergency nature of such requests and shall provide a
9 decision to the applicant within fifteen calendar days of the date of
10 application.

11 (10) The department or the county legislative authority may
12 determine an imminent danger exists. The county legislative authority
13 shall notify the department, in writing, if it determines that an
14 imminent danger exists. In cases of imminent danger, the department
15 shall issue an expedited written permit, upon request, for work to
16 remove any obstructions, repair existing structures, restore banks,
17 protect fish resources, or protect property. Expedited permit
18 requests require a complete written application as provided in
19 subsection (2) of this section and must be issued within fifteen
20 calendar days of the receipt of a complete written application.
21 Approval of an expedited permit is valid for up to sixty days from the
22 date of issuance. The department may not require the provisions of
23 the state environmental policy act, chapter 43.21C RCW, to be met as a
24 condition of issuing a permit under this subsection.

25 (11)(a) For any property, except for property located on a marine
26 shoreline, that has experienced at least two consecutive years of
27 flooding or erosion that has damaged or has threatened to damage a
28 major structure, water supply system, septic system, or access to any
29 road or highway, the county legislative authority may determine that a
30 chronic danger exists. The county legislative authority shall notify
31 the department, in writing, when it determines that a chronic danger
32 exists. In cases of chronic danger, the department shall issue a
33 permit, upon request, for work necessary to abate the chronic danger
34 by removing any obstructions, repairing existing structures, restoring

1 banks, restoring road or highway access, protecting fish resources, or
2 protecting property. Permit requests must be made and processed in
3 accordance with subsections (2) and (3) of this section.

4 (b) Any projects proposed to address a chronic danger identified
5 under (a) of this subsection that satisfies the project description
6 identified in RCW 77.55.181(1)(a)(ii) are not subject to the
7 provisions of the state environmental policy act, chapter 43.21C RCW.
8 However, the project is subject to the review process established in
9 RCW 77.55.181(3) as if it were a fish habitat improvement project.

10 (12) The department may issue an expedited written permit in those
11 instances where normal permit processing would result in significant
12 hardship for the applicant or unacceptable damage to the environment.
13 Expedited permit requests require a complete written application as
14 provided in subsection (2) of this section and must be issued within
15 fifteen calendar days of the receipt of a complete written
16 application. Approval of an expedited permit is valid for up to sixty
17 days from the date of issuance. The department may not require the
18 provisions of the state environmental policy act, chapter 43.21C RCW,
19 to be met as a condition of issuing a permit under this subsection.

20
21 **Sec. 286.** RCW 77.12.755 and 2003 c 311 s 10 are each amended to
22 read as follows:

23 ~~((In coordination with the department of natural resources and
24 lead entity groups,))~~ The department must establish a ranked inventory
25 of fish passage barriers on land owned by small forest landowners
26 based on the principle of fixing the worst first within a watershed
27 consistent with the fish passage priorities of the forest and fish
28 report. The department shall first gather and synthesize all
29 available existing information about the locations and impacts of fish
30 passage barriers in Washington. This information must include, but
31 not be limited to, the most recently available limiting factors
32 analysis conducted pursuant to RCW 77.85.060(2), the stock status
33 information contained in the department of fish and wildlife salmonid
34 stock inventory (SASSI), the salmon and steelhead habitat inventory

1 and assessment project (SSHIAP), and any comparable science-based
2 assessment when available. The inventory of fish passage barriers
3 must be kept current and at a minimum be updated by the beginning of
4 each calendar year. Nothing in this section grants the department or
5 others additional right of entry onto private property.

6

7 **Sec. 287.** RCW 77.12.870 and 2010 c 193 s 8 are each amended to
8 read as follows:

9 (1) The department(~~(, in partnership with the Northwest straits~~
10 ~~commission, the department of natural resources, and other interested~~
11 ~~parties,))~~) must create and ensure the maintenance of a database of
12 known derelict fishing gear and shellfish pots, including the type of
13 gear and its location.

14 (2) A person who loses or abandons commercial fishing gear or
15 shellfish pots within the waters of the state is encouraged to report
16 the location of the loss and the type of gear lost to the department
17 within forty-eight hours of the loss.

18

19 **Sec. 288.** RCW 77.12.878 and 2002 c 281 s 6 are each amended to
20 read as follows:

21 (1) The director shall create a rapid response plan in cooperation
22 with the aquatic nuisance species committee and its member agencies
23 that describes actions to be taken when a prohibited aquatic animal
24 species is found to be infesting a water body. These actions include
25 eradication or control programs where feasible and containment of
26 infestation where practical through notification, public education,
27 and the enforcement of regulatory programs.

28 (2) The commission may adopt rules to implement the rapid response
29 plan.

30 (3) The director(~~(, the department of ecology, and the Washington~~
31 ~~state parks and recreation commission))~~) may post signs at water bodies
32 that are infested with aquatic animal species that are classified as
33 prohibited aquatic animal species under RCW 77.12.020 or with invasive
34 species of the plant kingdom. The signs should identify the

1 prohibited plant and animal species present and warn users of the
2 water body of the hazards and penalties for possessing and
3 transporting these species. Educational signs may be placed at
4 uninfested sites.

5
6 **Sec. 289.** RCW 77.15.390 and 2001 c 253 s 40 are each amended to
7 read as follows:

8 (1) A person is guilty of unlawful taking of seaweed if the person
9 takes, possesses, or harvests seaweed and:

10 (a) The person does not have and possess the license required by
11 chapter 77.32 RCW for taking seaweed; or

12 (b) The action violates any rule of the department (~~or the~~
13 ~~department of natural resources~~) regarding seasons, possession
14 limits, closed areas, closed times, or any other rule addressing the
15 manner or method of taking, possessing, or harvesting of seaweed.

16 (2) Unlawful taking of seaweed is a misdemeanor. This does not
17 affect rights of the state to recover civilly for trespass,
18 conversion, or theft of state-owned valuable materials.

19
20 **Sec. 290.** RCW 77.44.040 and 1996 c 222 s 4 are each amended to
21 read as follows:

22 The goals of the warm water game fish enhancement program are to
23 improve the fishing for warm water game fish using cost-effective
24 management. Development of new ponds and lakes shall be an important
25 and integral part of the program. The department shall work (~~with~~
26 ~~the department of natural resources~~) to coordinate the reclamation of
27 surface mines and the development of warm water game fish ponds.
28 Improvement of warm water fishing shall be coordinated with the
29 protection and conservation of cold water fish populations. This
30 shall be accomplished by carefully designing the warm water projects
31 to have minimal adverse effects upon the cold water fish populations.
32 New pond and lake development should have beneficial effects upon
33 wildlife due to the increase in lacustrine and wetland habitat that
34 will accompany the improvement of warm water fish habitat. The

1 department shall not develop projects that will increase the
2 populations of undesirable or deleterious fish species such as carp,
3 squawfish, walking catfish, and others.

4 Fish culture programs shall be used in conditions where they will
5 prove to be cost-effective, and may include the purchase of warm water
6 fish from aquatic farmers defined in RCW 15.85.020. Consideration
7 should be made for development of urban area enhancement of fishing
8 opportunity for put-and-take species, such as channel catfish, that
9 are amenable to production by low-cost fish culture methods. Fish
10 culture shall also be used for stocking of high value species, such as
11 walleye, smallmouth bass, and tiger musky. Introduction of special
12 genetic strains that show high potential for recreational fishing
13 improvement, including Florida strain largemouth bass and striped
14 bass, shall be considered.

15 Transplantation and introduction of exotic warm water fish shall
16 be carefully reviewed to assure that adverse effects to native fish
17 and wildlife populations do not occur. This review shall include an
18 analysis of consequences from disease and parasite introduction.

19 Population management through the use of fish toxicants, including
20 rotenone or derris root, shall be an integral part of the warm water
21 game fish enhancement program. However, any use of fish toxicants
22 shall be subject to a thorough review to prevent adverse effects to
23 cold water fish, desirable warm water fish, and other biota.
24 Eradication of deleterious fish species shall be a goal of the
25 program.

26 Habitat improvement shall be a major aspect of the warm water game
27 fish enhancement program. Habitat improvement opportunities shall be
28 defined with scientific investigations, field surveys, and by using
29 the extensive experience of other state management entities.
30 Installation of cover, structure, water flow control structures,
31 screens, spawning substrate, vegetation control, and other management
32 techniques shall be fully used. The department shall work to gain
33 access to privately owned waters that can be developed with habitat
34 improvements to improve the warm water resource for public fishing.

1 The department shall use the resources of cooperative groups to
2 assist in the planning and implementation of the warm water game fish
3 enhancement program. In the development of the program the department
4 shall actively involve the organized fishing clubs that primarily fish
5 for warm water fish. The warm water fish enhancement program shall be
6 cooperative between the department and private landowners; private
7 landowners shall not be required to alter the uses of their private
8 property to fulfill the purposes of the warm water fish enhancement
9 program. The director shall not impose restrictions on the use of
10 private property, or take private property, for the purpose of the
11 warm water fish enhancement program.

12
13 **Sec. 291.** RCW 77.55.121 and 2005 c 146 s 404 are each amended to
14 read as follows:

15 (1) Beginning in January 1998, the department (~~and the department~~
16 ~~of natural resources~~) shall implement a habitat incentives program
17 based on the recommendations of federally recognized Indian tribes,
18 landowners, the regional fisheries enhancement groups, the timber,
19 fish, and wildlife cooperators, and other interested parties. The
20 program shall allow a private landowner to enter into an agreement
21 with the department(~~s~~) to enhance habitat on the landowner's
22 property for food fish, game fish, or other wildlife species. In
23 exchange, the landowner shall receive state regulatory certainty with
24 regard to future applications for a permit or a forest practices
25 permit on the property covered by the agreement. The overall goal of
26 the program is to provide a mechanism that facilitates habitat
27 development on private property while avoiding an adverse state
28 regulatory impact to the landowner at some future date. A single
29 agreement between the department(~~s~~) and a landowner may encompass up
30 to one thousand acres. A landowner may enter into multiple agreements
31 with the department(~~s~~), provided that the total acreage covered by
32 such agreements with a single landowner does not exceed ten thousand
33 acres. The department(~~s are~~) is not obligated to enter into an
34 agreement unless the department(~~s~~) finds that the agreement is in

1 the best interest of protecting fish or wildlife species or their
2 habitat.

3 (2) A habitat incentives agreement shall be in writing and shall
4 contain at least the following: (a) A description of the property
5 covered by the agreement; (b) an expiration date; (c) a description of
6 the condition of the property prior to the implementation of the
7 agreement; and (d) other information needed by the landowner and the
8 departments for future reference and decisions.

9 (3) As part of the agreement, the department may stipulate the
10 factors that will be considered when the department evaluates a
11 landowner's application for a permit on property covered by the
12 agreement. The department's identification of these evaluation
13 factors shall be in concurrence with ~~((the department of natural
14 resources and))~~ affected federally recognized Indian tribes. In
15 general, future decisions related to the issuance, conditioning, or
16 denial of a permit must be based on the conditions present on the
17 landowner's property at the time of the agreement, unless all parties
18 agree otherwise.

19 (4) As part of the agreement, the department ~~((of natural
20 resources))~~ may stipulate the factors that will be considered when the
21 department ~~((of natural resources))~~ evaluates a landowner's
22 application for a forest practices permit under chapter 76.09 RCW on
23 property covered by the agreement. The department's ~~((of natural
24 resources+))~~ identification of these evaluation factors shall be in
25 concurrence with ~~((the department and))~~ affected federally recognized
26 Indian tribes. In general, future decisions related to the issuance,
27 conditioning, or denial of forest practices permits shall be based on
28 the conditions present on the landowner's property at the time of the
29 agreement, unless all parties agree otherwise.

30 (5) The agreement is binding on and may be used by only the
31 landowner who entered into the agreement with the department. The
32 agreement shall not be appurtenant with the land. However, if a new
33 landowner chooses to maintain the habitat enhancement efforts on the
34 property, the new landowner and the department and the department of

1 natural resources may jointly choose to retain the agreement on the
2 property.

3 (6) If the department (~~(and the department of natural resources)~~)
4 receives multiple requests for agreements with private landowners
5 under the habitat incentives program, the department(~~(s)~~) shall
6 prioritize these requests and shall enter into as many agreements as
7 possible within available budgetary resources.

8
9 **Sec. 292.** RCW 77.55.211 and 2005 c 146 s 406 are each amended to
10 read as follows:

11 The department(~~(, the department of ecology, and the department of~~
12 ~~natural resources)~~) shall (~~(jointly)~~) develop an informational
13 brochure that describes when permits and any other authorizations are
14 required for flood damage prevention and reduction projects, and
15 recommend(~~(s)~~) ways to best proceed through the various regulatory
16 permitting processes.

17
18 **Sec. 293.** RCW 77.55.131 and 2005 c 146 s 405 are each amended to
19 read as follows:

20 The department (~~(and the department of ecology)~~) will work
21 cooperatively with the United States army corps of engineers to
22 develop a memorandum of agreement outlining dike vegetation management
23 guidelines so that dike owners are eligible for coverage under P.L.
24 84- 99, and state requirements established pursuant to RCW 77.55.021
25 are met.

26
27 **Sec. 294.** RCW 77.65.510 and 2009 c 195 s 1 are each amended to
28 read as follows:

29 (1) The department must establish and administer a direct retail
30 endorsement to serve as a single license that permits a Washington
31 license holder or alternate operator to commercially harvest retail-
32 eligible species and to clean, dress, and sell his or her catch
33 directly to consumers at retail, including over the internet. The
34 direct retail endorsement must be issued as an optional addition to

1 all holders of: (a) A commercial fishing license for retail-eligible
2 species that the department offers under this chapter; and (b) an
3 alternate operator license who are designated as an alternate operator
4 on a commercial fishing license for retail eligible species.

5 (2) The direct retail endorsement must be offered at the time of
6 application for the qualifying commercial fishing license.
7 Individuals in possession of a qualifying commercial fishing license
8 issued under this chapter, and alternate operators designated on such
9 a license, may add a direct retail endorsement to their current
10 license at any time. Individuals who do not have a commercial fishing
11 license for retail- eligible species issued under this chapter, and
12 who are not designated as alternate operators on such a license, may
13 not receive a direct retail endorsement. The costs, conditions,
14 responsibilities, and privileges associated with the endorsed
15 commercial fishing license is not affected or altered in any way by
16 the addition of a direct retail endorsement. These costs include the
17 base cost of the license and any revenue and excise taxes.

18 (3) An individual need only add one direct retail endorsement to
19 his or her license portfolio. If a direct retail endorsement is
20 selected by an individual holding more than one commercial fishing
21 license issued under this chapter, a single direct retail endorsement
22 is considered to be added to all qualifying commercial fishing
23 licenses held by that individual, and is the only license required for
24 the individual to sell at retail any retail-eligible species permitted
25 by all of the underlying endorsed licenses. If a direct retail
26 endorsement is selected by an individual designated as an alternate
27 operator on more than one commercial license issued under this
28 chapter, a single direct retail endorsement is the only license
29 required for the individual to sell at retail any retail-eligible
30 species permitted by all of the underlying endorsed licenses on which
31 the individual is designated as an alternate operator. The direct
32 retail endorsement applies only to the Washington license holder or
33 alternate operator obtaining the endorsement.

34

1 (4) In addition to any fees charged for the endorsed licenses and
2 harvest documentation as required by this chapter or the rules of the
3 department, the department may set a reasonable annual fee not to
4 exceed the administrative costs to the department for a direct retail
5 endorsement.

6 (5) The holder of a direct retail endorsement is responsible for
7 documenting the commercial harvest of salmon and crab according to the
8 provisions of this chapter, the rules of the department for a
9 wholesale fish dealer, and the reporting requirements of the endorsed
10 license. Any retail-eligible species caught by the holder of a direct
11 retail endorsement must be documented on fish tickets.

12 (6) The direct retail endorsement must be displayed in a readily
13 visible manner by the seller wherever and whenever a sale to someone
14 other than a licensed wholesale dealer occurs. The commission may
15 require that the holder of a direct retail endorsement notify the
16 department up to eighteen hours before conducting an in-person sale of
17 retail-eligible species, except for in-person sales that have a
18 cumulative retail sales value of less than one hundred fifty dollars
19 in a twenty-four hour period that are sold directly from the vessel.
20 For sales occurring in a venue other than in person, such as over the
21 internet, through a catalog, or on the phone, the direct retail
22 endorsement number of the seller must be provided to the buyer both at
23 the time of sale and the time of delivery. All internet sales must be
24 conducted in accordance with federal laws and regulations.

25 (7) The direct retail endorsement is to be held by a natural
26 person and is not transferrable or assignable. If the endorsed
27 license is transferred, the direct retail endorsement immediately
28 becomes void, and the transferor is not eligible for a full or
29 prorated reimbursement of the annual fee paid for the direct retail
30 endorsement. Upon becoming void, the holder of a direct retail
31 endorsement must surrender the physical endorsement to the department.

32 (8) The holder of a direct retail endorsement must abide by the
33 provisions of Title 69 RCW as they apply to the processing and retail
34 sale of seafood. The department must distribute a pamphlet((7

1 ~~provided by the department of agriculture,))~~ with the direct retail
2 endorsement generally describing the labeling requirements set forth
3 in chapter 69.04 RCW as they apply to seafood.

4 (9) The holder of a qualifying commercial fishing license issued
5 under this chapter, or an alternate operator designated on such a
6 license, must either possess a direct retail endorsement or a
7 wholesale dealer license provided for in RCW 77.65.280 in order to
8 lawfully sell their catch or harvest in the state to anyone other than
9 a licensed wholesale dealer.

10 (10) The direct retail endorsement entitles the holder to sell a
11 retail-eligible species only at a temporary food service establishment
12 as that term is defined in RCW 69.06.045, or directly to a restaurant
13 or other similar food service business.

14
15 **Sec. 295.** RCW 77.70.210 and 2000 c 107 s 70 are each amended to
16 read as follows:

17 (1) A herring spawn on kelp fishery license is required to
18 commercially take herring eggs which have been deposited on vegetation
19 of any type.

20 (2) A herring spawn on kelp fishery license may be issued only to
21 a person who:

22 (a) Holds a herring fishery license issued under RCW 77.65.200 and
23 77.70.120; and

24 (b) Is the highest bidder in an auction conducted under subsection
25 (3) of this section.

26 (3) The department shall sell herring spawn on kelp commercial
27 fishery licenses at auction to the highest bidder. Bidders shall
28 identify their sources of kelp. (~~Kelp harvested from state-owned
29 aquatic lands as defined in RCW 79.90.465 requires the written consent
30 of the department of natural resources.~~) The department shall give
31 all holders of herring fishery licenses thirty days' notice of the
32 auction.

33
34

1 **Sec. 296.** RCW 77.105.070 and 1994 c 264 s 47 are each amended to
2 read as follows:

3 The department shall (~~work with the department of ecology and~~
4 ~~local government entities to~~) streamline the siting process for new
5 enhancement projects. The department is encouraged to work with the
6 legislature to develop statutory changes that enable expeditious
7 processing and granting of permits for fish enhancement projects.

8
9 **Sec. 297.** RCW 79.13.620 and 2003 c 334 s 378 are each amended to
10 read as follows:

11 (1) It is the purpose of (~~chapter 163, Laws of 1996~~) this
12 section that all state agricultural lands, grazing lands, and
13 grazeable woodlands (~~shall~~) be managed in keeping with the statutory
14 and constitutional mandates under which each agency operates.
15 (~~Chapter 163, Laws of 1996 is consistent with section 1, chapter 4,~~
16 ~~Laws of 1993 sp. sess.~~)

17 (2) (~~The ecosystem standards developed under chapter 4, Laws of~~
18 ~~1993 sp. sess. for state-owned agricultural and grazing lands are~~
19 ~~defined as desired ecological conditions. The standards are not~~
20 ~~intended to prescribe practices. For this reason,~~) Land managers are
21 encouraged to use an adaptive management approach in selecting and
22 implementing practices that work towards meeting the standards based
23 on the best available science and evaluation tools.

24 (3) (~~For as long as the chapter 4, Laws of 1993 sp. sess.~~
25 ~~ecosystem standards remain in effect, they~~) Land shall be (~~applied~~)
26 managed through a collaborative process that incorporates the
27 following principles:

28 (a) The land manager and lessee or permittee shall look at the
29 land together and make every effort to reach agreement on management
30 and resource objectives for the land under consideration;

31 (b) They will then discuss management options and make every
32 effort to reach agreement on which of the available options will be
33 used to achieve the agreed-upon objectives;

34

1 (c) No land manager or owner ever gives up his or her management
2 prerogative;

3 (d) Efforts will be made to make land management plans
4 economically feasible for landowners, managers, and lessees and to
5 make the land management plan compatible with the lessee's entire
6 operation;

7 (e) Coordinated resource management planning is encouraged where
8 either multiple ownerships, or management practices, or both, are
9 involved;

10 (f) The department of fish and wildlife shall consider multiple
11 use, including grazing, on lands owned or managed by the department of
12 fish and wildlife where it is compatible with the management
13 objectives of the land; and

14 (g) The department shall allow multiple use on lands owned or
15 managed by the department where multiple use can be demonstrated to be
16 compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

17 (4) The ecosystem standards are to be achieved by applying
18 appropriate land management practices on riparian lands and on the
19 uplands in order to reach the desired ecological conditions.

20 ~~((5) The legislature urges that state agencies that manage
21 grazing lands make planning and implementation of chapter 163, Laws of
22 1996, using the coordinated resource management and planning process,
23 a high priority, especially where either multiple ownerships, or
24 multiple use resources objectives, or both, are involved. In all
25 cases, the choice of using the coordinated resource management
26 planning process will be a voluntary decision by all concerned parties
27 including agencies, private landowners, lessees, permittees, and other
28 interests.))~~

29
30 **Sec. 298.** RCW 79.19.080 and 2003 c 334 s 531 are each amended to
31 read as follows:

32 Periodically, at intervals to be determined by the board, the
33 department shall identify trust lands which are expected to convert to
34 commercial, residential, or industrial uses within ten years. The

1 department shall adhere to existing local comprehensive plans, zoning
2 classifications, and duly adopted local policies when making this
3 identification and determining the fair market value of the property.

4 The department shall hold a public hearing on the proposal in the
5 county where the state land is located. At least fifteen days but not
6 more than thirty days before the hearing, the department shall publish
7 a public notice of reasonable size in display advertising form,
8 setting forth the date, time, and place of the hearing, at least once
9 in one or more daily newspapers of general circulation in the county
10 and at least once in one or more weekly newspapers circulated in the
11 area where the trust land is located. At the same time that the
12 published notice is given, the department shall give written notice of
13 the hearings to the ~~((departments of fish and wildlife and general
14 administration, to the parks and recreation commission, and to the))~~
15 county, city, or town in which the property is situated. The
16 department shall disseminate a news release pertaining to the hearing
17 among printed and electronic media in the area where the trust land is
18 located. The public notice and news release also shall identify trust
19 lands in the area which are expected to convert to commercial,
20 residential, or industrial uses within ten years.

21 A summary of the testimony presented at the hearings shall be
22 prepared for the board's consideration. The board shall designate
23 trust lands which are expected to convert to commercial, residential,
24 or industrial uses as urban land. Descriptions of lands designated by
25 the board shall be made available to the county and city or town in
26 which the land is situated and for public inspection and copying at
27 the department's administrative office in Olympia, Washington and at
28 each area office.

29 The hearing and notice requirements of this section apply to those
30 trust lands which have been identified by the department prior to July
31 1, 1984, as being expected to convert to commercial, residential, or
32 industrial uses within the next ten years, and which have not been
33 sold or exchanged prior to July 1, 1984.

34

1 **Sec. 299.** RCW 79.70.030 and 2003 c 334 s 549 are each amended to
2 read as follows:

3 In order to set aside, preserve, and protect natural areas within
4 the state, the department is authorized, in addition to any other
5 powers, to:

6 (1) Establish the criteria for selection, acquisition, management,
7 protection, and use of such natural areas, including:

8 (a) Limiting public access to natural area preserves consistent
9 with the purposes of this chapter. Where appropriate, and on a case-
10 by-case basis, a buffer zone with an increased low level of public
11 access may be created around the environmentally sensitive areas;

12 (b) Developing a management plan for each designated natural area
13 preserve. The plan must identify the significant resources to be
14 conserved consistent with the purposes of this chapter and identify
15 the areas with potential for low-impact public and environmental
16 educational uses. The plan must specify the types of management
17 activities and public uses that are permitted, consistent with the
18 purposes of this chapter. The department must make the plans
19 available for review and comment by the public, and state, tribal, and
20 local agencies, prior to final approval;

21 (2) Cooperate or contract with any federal, state, or local
22 governmental agency, private organizations, or individuals in carrying
23 out the purpose of this chapter;

24 (3) Consistent with the plan, acquire by gift, devise, purchase,
25 grant, dedication, or means other than eminent domain, the fee or any
26 lesser right or interest in real property which shall be held and
27 managed as a natural area;

28 (4) Acquire by gift, devise, grant, or donation any personal
29 property to be used in the acquisition and/or management of natural
30 areas;

31 (5) Inventory existing public, state, and private lands in
32 cooperation with the council to assess possible natural areas to be
33 preserved within the state;

34

1 (6) Maintain a natural heritage program to provide assistance in
2 the selection and nomination of areas containing natural heritage
3 resources for registration or dedication. The program shall maintain
4 a classification of natural heritage resources, an inventory of their
5 locations, and a data bank for such information. (~~The department
6 shall cooperate with the department of fish and wildlife in the
7 selection and nomination of areas from the data bank that relate to
8 critical wildlife habitats.~~) Information from the data bank shall be
9 made available to public and private agencies and individuals for
10 environmental assessment and proprietary land management purposes.
11 Usage of the classification, inventory, or data bank of natural
12 heritage resources for any purpose inconsistent with the natural
13 heritage program is not authorized;

14 (7) Prepare a natural heritage plan which shall govern the natural
15 heritage program in the conduct of activities to create and manage a
16 system of natural areas that includes natural resources conservation
17 areas, and may include areas designated under the research natural
18 area program on federal lands in the state;

19 (a) The plan shall list the natural heritage resources to be
20 considered for registration and shall provide criteria for the
21 selection and approval of natural areas under this chapter;

22 (b) The department shall provide opportunities for input, comment,
23 and review to the public, other public agencies, and private groups
24 with special interests in natural heritage resources during
25 preparation of the plan;

26 (c) Upon approval by the council and adoption by the department,
27 the plan shall be updated and submitted biennially to the appropriate
28 committees of the legislature for their information and review. The
29 plan shall take effect ninety days after the adjournment of the
30 legislative session in which it is submitted unless the reviewing
31 committees suggest changes or reject the plan; and

32 (8) Maintain a state register of natural areas containing
33 significant natural heritage resources to be called the Washington
34 register of natural area preserves. Selection of natural areas for

1 registration shall be in accordance with criteria listed in the
2 natural heritage plan and accomplished through voluntary agreement
3 between the owner of the natural area and the department. No
4 privately owned lands may be proposed to the council for registration
5 without prior notice to the owner or registered without voluntary
6 consent of the owner. No state or local governmental agency may
7 require such consent as a condition of any permit or approval of or
8 settlement of any civil or criminal proceeding or to penalize any
9 landowner in any way for failure to give, or for withdrawal of, such
10 consent.

11 (a) The department shall adopt rules as authorized by RCW
12 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary
13 natural area registration.

14 (b) After approval by the council, the department may place sites
15 onto the register or remove sites from the register.

16 (c) The responsibility for management of registered natural area
17 preserves shall be with the preserve owner. A voluntary management
18 agreement may be developed between the department and the owners of
19 the sites on the register.

20 (d) Any public agency may register lands under provisions of this
21 chapter.

22
23 **Sec. 300.** RCW 79.71.120 and 1997 c 371 s 1 are each amended to
24 read as follows:

25 The property currently designated as the Elk river natural area
26 preserve is transferred from management under chapter 79.70 RCW as a
27 natural area preserve to management under chapter 79.71 RCW as a
28 natural resources conservation area. The legislature finds that
29 hunting is a suitable low-impact public use within the Elk river
30 natural resources conservation area. The department of natural
31 resources shall incorporate this legislative direction into the
32 management plan developed for the Elk river natural resources
33 conservation area. (~~The department shall work with the department of~~
34

1 ~~fish and wildlife to identify hunting opportunities compatible with~~
2 ~~the area's conservation purposes.))~~

3
4 **Sec. 301.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to
5 read as follows:

6 The legislature finds that the department provides, manages, and
7 monitors aquatic land dredged material disposal sites on state-owned
8 aquatic lands for materials dredged from rivers, harbors, and shipping
9 lanes. These disposal sites (~~are~~) should be approved through a
10 cooperative planning process by the department(~~s of natural resources~~
11 ~~and ecology~~), the United States army corps of engineers, and the
12 United States environmental protection agency (~~in cooperation with~~
13 ~~the Puget Sound partnership~~). These disposal sites are essential to
14 the commerce and well-being of the citizens of the state of
15 Washington. Management and environmental monitoring of these sites
16 are necessary to protect environmental quality and to (~~assure~~)
17 ensure appropriate use of state-owned aquatic lands. The creation of
18 an aquatic land dredged material disposal site account is a reasonable
19 means to enable and facilitate proper management and environmental
20 monitoring of these disposal sites.

21
22 **Sec. 302.** RCW 79.125.710 and 2005 c 155 s 517 are each amended to
23 read as follows:

24 Whenever application is made to the department by any incorporated
25 city or town or metropolitan park district for the use of any state-
26 owned tidelands or shorelands within the corporate limits of the city
27 or town or metropolitan park district for municipal park and/or
28 playground purposes, the department shall cause the application to be
29 entered in the records of its office, and shall then forward the
30 application to the governor, who shall appoint a committee of five
31 representative citizens of the city or town, in addition to the
32 commissioner (~~and the director of ecology, both of~~), whom shall be
33 an ex officio member(~~s~~) of the committee, to investigate the lands
34 and determine whether they are suitable and needed for park or

1 playground purposes; and, if they so find, the commissioner shall
2 certify to the governor that the property shall be deeded, when in
3 accordance with RCW 79.125.200 and 79.125.700, to the city or town or
4 metropolitan park district and the governor shall then execute a deed
5 in the name of the state of Washington, attested by the secretary of
6 state, conveying the use of the lands to the city or town or
7 metropolitan park district for park or playground purposes for so long
8 as it shall continue to hold, use, and maintain the lands for park or
9 playground purposes.

10

11 **Sec. 303.** RCW 79.125.730 and 2005 c 155 s 519 are each amended to
12 read as follows:

13 The (~~director of ecology~~) commissioner, in addition to serving
14 as an ex officio member of the committee, is authorized and directed
15 to assist the city or town or metropolitan park district in the
16 development and decoration of any lands so conveyed and to furnish
17 trees, grass, flowers, and shrubs (~~therefor~~).

18

19 **Sec. 304.** RCW 79.135.130 and 2005 c 155 s 703 are each amended to
20 read as follows:

21 (1) The department, upon the receipt of an application for a lease
22 for the purpose of planting and cultivating oyster beds or for the
23 purpose of cultivating clams or other edible shellfish, shall (~~notify~~
24 ~~the director of fish and wildlife of the filing of the application~~
25 ~~describing the tidelands or beds of navigable waters applied for. The~~
26 ~~director of fish and wildlife shall~~) cause an inspection of the lands
27 applied for (~~to be made and shall make a full report to the~~
28 ~~department of the director's findings as to whether it is necessary,~~)
29 in order to protect existing natural oyster beds, and to secure
30 adequate seeding of the lands, to retain the lands described in the
31 application for lease or any part of the lands, and in the event the
32 (~~director~~) department deems it advisable to retain the lands or any
33 part of the lands for the protection of existing natural oyster beds
34 or to guarantee the continuance of an adequate seed stock for existing

1 natural oyster beds, the lands shall not be subject to lease.
2 However, if the (~~director~~) department determines that the lands
3 applied for or any part of the lands may be leased, the (~~director~~)
4 department shall (~~so notify the department and the director shall~~)
5 cause an examination of the lands to be made to determine the
6 presence, if any, of natural oysters, clams, or other edible shellfish
7 on the lands, and to fix the rental value of the lands for use for
8 oyster, clam, or other edible shellfish cultivation. In the report
9 (~~to~~), the department(~~, the director~~) shall recommend a minimum
10 rental for the lands and an estimation of the value of the oysters,
11 clams, or other edible shellfish, if any, then present on the lands
12 applied for. The lands approved by the (~~director~~) department for
13 lease may then be leased to the applicant for a period of not less
14 than five years nor more than ten years at a rental not less than the
15 minimum (~~rental~~) recommended (~~by the director of fish and~~
16 ~~wildlife~~) rent. In addition, before entering upon possession of the
17 land, the applicant shall pay the value of the oysters, clams, or
18 other edible shellfish, if any, then present on the land as determined
19 by the (~~director~~) department, plus the expense incurred by the
20 (~~director~~) department in investigating the quantity of oysters,
21 clams, or other edible shellfish, present on the land applied for.

22 (2) When issuing new leases or reissuing existing leases the
23 department shall not permit the commercial harvest of subtidal
24 hardshell clams by means of hydraulic escalating when the upland
25 within five hundred feet of any lease tract is zoned for residential
26 development.

27
28 **Sec. 305.** RCW 79.135.140 and 2005 c 155 s 704 are each amended to
29 read as follows:

30 Before entering into possession of any leased tidelands or beds of
31 navigable waters, the applicant shall have the lands surveyed by a
32 registered land surveyor, and the applicant shall furnish to the
33 department (~~and to the director of fish and wildlife,~~) a map of the
34 leased premises signed and certified by the registered land surveyor.

1 The lessee shall also mark the boundaries of the leased premises by
2 piling monuments or other markers of a permanent nature (~~as the~~
3 ~~director of fish and wildlife may direct~~)).

4
5 **Sec. 306.** RCW 79.135.150 and 2005 c 155 s 705 are each amended to
6 read as follows:

7 The department may, upon the filing of an application for a
8 renewal lease, inspect the tidelands or beds of navigable waters, and
9 if the department deems it in the best interests of the state to re-
10 lease the lands, the department shall issue to the applicant a renewal
11 lease for a further period not exceeding thirty years and under the
12 terms and conditions as may be determined by the department. However,
13 in the case of an application for a renewal lease it shall not be
14 necessary for the lands to be inspected and reported upon by the
15 (~~director of fish and wildlife~~) department.

16
17 **Sec. 307.** RCW 79.135.320 and 2005 c 155 s 712 are each amended to
18 read as follows:

19 (1) (~~In the event that the fish and wildlife commission approves~~
20 ~~the vacation of the whole or any part of a reserve,~~) The department
21 may vacate and offer for lease the parts or all of the reserve as it
22 deems to be for the best interest of the state, and all moneys
23 received for the lease of the lands shall be paid to the department.

24 (2) Notwithstanding RCW 77.60.020, subsection (1) of this section,
25 or any other provision of state law, the state oyster reserves in Eld
26 Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or
27 Thurston counties shall permanently be designated as state oyster
28 reserve lands.

29
30 **Sec. 308.** RCW 79.135.410 and 2005 c 155 s 715 are each amended to
31 read as follows:

32 (1) The maximum daily wet weight harvest or possession of seaweed
33 for personal use from all state-owned aquatic lands and all privately
34 owned tidelands is ten pounds per person. The (~~department in~~

1 ~~cooperation with the~~) department of fish and wildlife may establish
2 seaweed harvest limits of less than ten pounds for conservation
3 purposes. This section shall in no way affect the ability of any
4 state agency to prevent harvest of any species of marine aquatic plant
5 from lands under its control, ownership, or management.

6 (2) Except as provided under subsection (3) of this section,
7 commercial harvesting of seaweed from state-owned aquatic lands, and
8 all privately owned tidelands is prohibited. This subsection shall in
9 no way affect commercial seaweed aquaculture.

10 (3) Upon ~~((mutual))~~ approval by ~~((the department and))~~ the
11 department of fish and wildlife, seaweed species of the genus
12 Macrocytis may be commercially harvested for use in the herring
13 spawn- on-kelp fishery.

14 (4) Importation of seaweed species of the genus Macrocytis into
15 Washington state for the herring spawn-on-kelp fishery is subject to
16 the fish and shellfish disease control policies ~~((of the department of
17 fish and wildlife))~~. Macrocytis shall not be imported from areas
18 with fish or shellfish diseases associated with organisms that are
19 likely to be transported with Macrocytis. The department shall
20 incorporate this policy on Macrocytis importation into its overall
21 fish and shellfish disease control policies.

22
23 **Sec. 309.** RCW 79A.05.255 and 2000 c 48 s 1 and 2000 c 11 s 35 are
24 each reenacted and amended to read as follows:

25 (1) There is created a winter recreation advisory committee to
26 advise the parks and recreation commission in the administration of
27 this chapter and to assist and advise the commission in the
28 development of winter recreation facilities and programs.

29 (2) The committee shall consist of:

30 (a) Six representatives of the nonsnowmobiling winter recreation
31 public appointed by the commission, including a resident of each of
32 the six geographical areas of this state where nonsnowmobiling winter
33 recreation activity occurs, as defined by the commission.

34

1 (b) Three representatives of the snowmobiling public appointed by
2 the commission.

3 (c) One (~~representative of the department of natural resources,~~
4 ~~one representative of the department of fish and wildlife, and one~~)
5 representative of (~~the Washington state association of counties, each~~
6 ~~of whom shall be~~) a statewide private association generally
7 representing the interests of county legislative bodies and executives
8 appointed by the director (~~of the particular department or~~
9 ~~association~~)).

10 (3) The terms of the members appointed under subsection (2)(a) and
11 (b) of this section shall begin on October 1st of the year of
12 appointment and shall be for three years or until a successor is
13 appointed, except in the case of appointments to fill vacancies for
14 the remainder of the unexpired term: PROVIDED, That the first of
15 these members shall be appointed for terms as follows: Three members
16 shall be appointed for one year, three members shall be appointed for
17 two years, and three members shall be appointed for three years.

18 (4) Members of the committee shall be reimbursed from the winter
19 recreational program account created by RCW 79A.05.235 for travel
20 expenses as provided in RCW 43.03.050 and 43.03.060.

21 (5) The committee shall meet at times and places it determines not
22 less than twice each year and additionally as required by the
23 committee chair or by majority vote of the committee. The chair of
24 the committee shall be chosen under procedures adopted by the
25 committee. The committee shall adopt any other procedures necessary
26 to govern its proceedings.

27 (6) The director of parks and recreation or the director's
28 designee shall serve as secretary to the committee and shall be a
29 nonvoting member.

30
31 **Sec. 310.** RCW 79A.05.351 and 2007 c 176 s 2 are each amended to
32 read as follows:

33 (1) The outdoor education and recreation grant program is hereby
34 created, subject to the availability of funds in the outdoor education

1 and recreation account. The commission shall establish and implement
2 the program by rule to provide opportunities for public agencies,
3 private nonprofit organizations, formal school programs, nonformal
4 after-school programs, and community-based programs to receive grants
5 from the account. Programs that provide outdoor education
6 opportunities to schools shall be fully aligned with the state's
7 essential academic learning requirements.

8 (2) The program shall be phased in beginning with the schools and
9 students with the greatest needs in suburban, rural, and urban areas
10 of the state. The program shall focus on students who qualify for
11 free and reduced-price lunch, who are most likely to fail
12 academically, or who have the greatest potential to drop out of
13 school.

14 (3) The director shall set priorities and develop criteria for the
15 awarding of grants to outdoor environmental, ecological, agricultural,
16 or other natural resource-based education and recreation programs
17 considering at least the following:

18 (a) Programs that contribute to the reduction of academic failure
19 and dropout rates;

20 (b) Programs that make use of research-based, effective
21 environmental, ecological, agricultural, or other natural resource-
22 based education curriculum;

23 (c) Programs that contribute to healthy life styles through
24 outdoor recreation and sound nutrition;

25 (d) Various Washington state parks as venues and use of the
26 commission's personnel as a resource;

27 (e) Programs that maximize the number of participants that can be
28 served;

29 (f) Programs that will commit matching and in-kind resources;

30 (g) Programs that create partnerships with public and private
31 entities;

32 (h) Programs that provide students with opportunities to directly
33 experience and understand nature and the natural world; and

34

1 (i) Programs that include ongoing program evaluation, assessment,
2 and reporting of their effectiveness.

3 (4) The director shall create an advisory committee to assist and
4 advise the commission in the development and administration of the
5 outdoor education and recreation program. The director should solicit
6 representation on the committee from (~~the office of the~~
7 ~~superintendent of public instruction, the department of fish and~~
8 ~~wildlife,~~) the business community, outdoor organizations with an
9 interest in education, and any others the commission deems sufficient
10 to ensure a cross section of stakeholders. When the director creates
11 such an advisory committee, its members shall be reimbursed from the
12 outdoor education and recreation program account for travel expenses
13 as provided in RCW 43.03.050 and 43.03.060.

14 (5) The outdoor education and recreation program account is
15 created in the custody of the state treasurer. Funds deposited in the
16 outdoor education and recreation program account shall be transferred
17 only to the commission to be used solely for the commission's outdoor
18 education and recreation program purposes identified in this section
19 including the administration of the program. The director may accept
20 gifts, grants, donations, or moneys from any source for deposit in the
21 outdoor education and recreation program account. Any public agency
22 in this state may develop and implement outdoor education and
23 recreation programs. The director may make grants to public agencies
24 and contract with any public or private agency or person to develop
25 and implement outdoor education and recreation programs. The outdoor
26 education and recreation program account is subject to allotment
27 procedures under chapter 43.88 RCW, but an appropriation is not
28 required for expenditures.

29
30 **Sec. 311.** RCW 79A.05.360 and 1999 c 249 s 1301 are each amended
31 to read as follows:

32 The commission may establish a system of underwater parks to
33 provide for diverse recreational diving opportunities and to conserve
34 and protect unique marine resources of the state of Washington. In

1 establishing and maintaining an underwater park system, the commission
2 may:

3 (1) Plan, construct, and maintain underwater parks;

4 (2) Acquire property and enter management agreements with other
5 units of state government for the management of lands, tidelands, and
6 bedlands as underwater parks;

7 (3) Construct artificial reefs and other underwater features to
8 enhance marine life and recreational uses of an underwater park;

9 (4) Accept gifts and donations for the benefit of underwater
10 parks;

11 (5) Facilitate private efforts to construct artificial reefs and
12 underwater parks;

13 (6) Work with the federal government(~~(,)~~) and local governments
14 (~~(and other appropriate agencies of state government, including but~~
15 ~~not limited to: The department of natural resources, the department~~
16 ~~of fish and wildlife and the natural heritage council)) to carry out
17 the purposes of this chapter; and~~

18 (7) Contract with other state agencies or local governments for
19 the management of an underwater park unit.

20
21 **Sec. 312.** RCW 79A.60.520 and 2007 c 341 s 56 are each amended to
22 read as follows:

23 The commission(~~(, in consultation with the departments of ecology,~~
24 ~~fish and wildlife, natural resources, social and health services, and~~
25 ~~the Puget Sound partnership)) shall conduct a literature search and
26 analyze pertinent studies to identify areas which are polluted or
27 environmentally sensitive within the state's waters. Based on this
28 review the commission shall designate appropriate areas as polluted or
29 environmentally sensitive, for the purposes of chapter 393, Laws of
30 1989 only.~~

31
32 **Sec. 313.** RCW 79A.60.550 and 1993 c 244 s 34 are each amended to
33 read as follows:

34
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1 The (~~department of ecology, in consultation with the~~)
2 commission(~~(,)~~) shall, for initiation of the statewide program only,
3 develop criteria by rule for the design, installation, and operation
4 of sewage pumpout and dump units, taking into consideration the ease
5 of access to the unit by the boating public. (~~The department of~~
6 ~~ecology may adopt rules to administer the provisions of this~~
7 ~~section.~~)

8
9 **Sec. 314.** RCW 79A.60.620 and 2000 c 11 s 114 are each amended to
10 read as follows:

11 (1) The Washington sea grant program(~~(, in consultation with the~~
12 ~~department of ecology,~~) shall develop and conduct a voluntary spill
13 prevention education program that targets small spills from commercial
14 fishing vessels, ferries, cruise ships, ports, and marinas.
15 Washington sea grant shall coordinate the spill prevention education
16 program with recreational boater education performed by the state
17 parks and recreation commission.

18 (2) The spill prevention education program shall illustrate ways
19 to reduce oil contamination of bilge water, accidental spills of
20 hydraulic fluid and other hazardous substances during routine
21 maintenance, and reduce spillage during refueling. The program shall
22 illustrate proper disposal of oil and hazardous substances and promote
23 strategies to meet shoreside oil and hazardous substance handling, and
24 disposal needs of the targeted groups. The program shall include a
25 series of training workshops and the development of educational
26 materials.

27
28 **Sec. 315.** RCW 79A.05.285 and 1999 c 249 s 907 are each amended to
29 read as follows:

30 The commission is authorized to evaluate and acquire land under
31 RCW (~~(79.01.612 in cooperation with the department of natural~~
32 ~~resources)~~) 79.10.030.

33
34

1 **Sec. 316.** RCW 79A.30.050 and 1995 c 200 s 6 are each amended to
2 read as follows:

3 ~~((1) If the authority and state agencies find it mutually
4 beneficial to do so, they are authorized to collaborate and cooperate
5 on projects of shared interest. Agencies authorized to collaborate
6 with the authority include but are not limited to: The commission for
7 activities and projects related to public recreation; the department
8 of agriculture for projects related to the equine agricultural
9 industry; the department of community, trade, and economic development
10 with respect to community and economic development and tourism issues
11 associated with development of the state horse park; Washington State
12 University with respect to opportunities for animal research,
13 education, and extension; the department of ecology with respect to
14 opportunities for making the state horse park's waste treatment
15 facilities a demonstration model for the handling of waste to protect
16 water quality; and with local community colleges with respect to
17 programs related to horses, economic development, business, and
18 tourism.~~

19 ~~—(2))~~ The authority shall cooperate with 4-H clubs, pony clubs,
20 youth groups, and local park departments to provide youth recreational
21 activities. The authority shall also provide for preferential use of
22 an area of the horse park facility for youth and ~~((the disabled))~~
23 individuals with disabilities at nominal cost.

24

25 **Sec. 317.** RCW 79A.50.090 and 1969 ex.s. c 247 s 2 are each
26 amended to read as follows:

27 The department of natural resources shall ~~((not rescind the
28 withdrawal of))~~ have reasonable access across all public land in any
29 existing and future state park ~~((nor sell any timber or other valuable
30 material therefrom or grant any right of way or easement thereon,
31 except as provided in the withdrawal order or for off-site drilling,
32 without the concurrence of the state parks and recreation commission.~~

33 ~~The department of natural resources shall have reasonable access~~

34

1 ~~across such lands~~)) in order to reach other public lands administered
2 by the department of natural resources.

3
4 **Sec. 318.** RCW 79A.50.100 and 1995 c 399 s 209 are each amended to
5 read as follows:

6 (1) A public hearing may be held prior to any withdrawal of state
7 trust lands and shall be held prior to any revocation of withdrawal or
8 modification of withdrawal of state trust lands used for recreational
9 purposes by the department of natural resources (~~or by other state~~
10 ~~agencies~~)).

11 (2) The department of natural resources shall cause notice of the
12 withdrawal, revocation of withdrawal or modification of withdrawal of
13 state trust lands as described in subsection (1) of this section to be
14 published by advertisement once a week for four weeks prior to the
15 public hearing in at least one newspaper published and of general
16 circulation in the county or counties in which the state trust lands
17 are situated, and by causing a copy of said notice to be posted in a
18 conspicuous place in the department's Olympia office, in the district
19 office in which the land is situated, and in the office of the county
20 auditor in the county where the land is situated thirty days prior to
21 the public hearing. The notice shall specify the time and place of
22 the public hearing and shall describe with particularity each parcel
23 of state trust lands involved in said hearing.

24 (3) The board of natural resources shall administer the hearing
25 according to its prescribed rules and regulations.

26 (4) The board of natural resources shall determine the most
27 beneficial use or combination of uses of the state trust lands. (~~Its~~
28 ~~decision will be conclusive as to the matter: PROVIDED, HOWEVER, That~~
29 ~~said decisions as to uses shall conform to applicable state plans and~~
30 ~~policy guidelines adopted by the department of community, trade, and~~
31 ~~economic development.~~))

32
33 **Sec. 319.** RCW 79A.15.110 and 2007 c 241 s 36 are each amended to
34 read as follows:

1 ((A—state)) The recreation and conservation office or a local
2 agency shall review the proposed project application with the county
3 or city with jurisdiction over the project area prior to applying for
4 funds for the acquisition of property under this chapter. The
5 appropriate county or city legislative authority may, at its
6 discretion, submit a letter to the board identifying the authority's
7 position with regard to the acquisition project. The board shall make
8 the letters received under this section available to the governor and
9 the legislature when the prioritized project list is submitted under
10 RCW 79A.15.120, 79A.15.060, and 79A.15.070.

11
12 **Sec. 320.** RCW 78.44.280 and 1999 c 252 s 2 are each amended to
13 read as follows:

14 Surface disturbances caused by an underground metals mining and
15 milling operation are subject to the requirements of this chapter if
16 the operation is proposed after June 30, 1999. An operation is
17 proposed when an agency is presented with an application for an
18 operation or expansion of an existing operation having a probable
19 significant adverse environmental impact under chapter 43.21C RCW.
20 The department ((of ecology)) shall retain authority for reclamation
21 of surface disturbances caused by an underground operation operating
22 at any time prior to June 30, 1999(~~(, unless the operator requests~~
23 ~~that authority for reclamation of surface disturbances caused by such~~
24 ~~operation be transferred to the department under the requirements of~~
25 ~~this chapter))).~~

26
27 **Sec. 321.** RCW 78.52.125 and 1994 sp.s. c 9 s 822 are each amended
28 to read as follows:

29 Any person desiring or proposing to drill any well in search of
30 oil or gas, when such drilling would be conducted through or under any
31 surface waters of the state, shall prepare and submit an environmental
32 impact statement upon such form as the department of ((ecology))
33 natural resources shall prescribe at least one hundred and twenty days
34 prior to commencing the drilling of any such well. Within ninety days

1 after receipt of such environmental statement the department of
2 ((ecology)) natural resources shall (~~prepare and submit to the~~
3 ~~department of natural resources a report examining~~) examine the
4 potential environmental impact of the proposed well and
5 recommendations for department action thereon. If after consideration
6 of the report the department of natural resources determines that the
7 proposed well is likely to have a substantial environmental impact the
8 drilling permit for such well may be denied.

9 The department of natural resources shall require sufficient
10 safeguards to minimize the hazards of pollution of all surface and
11 ground waters of the state. If safeguards acceptable to the
12 department of natural resources cannot be provided the drilling permit
13 shall be denied.

14

15 **Sec. 322.** RCW 78.56.040 and 1994 c 232 s 4 are each amended to
16 read as follows:

17 The department of ((ecology)) natural resources shall require each
18 applicant submitting a checklist pursuant to chapter 43.21C RCW for a
19 metals mining and milling operation to disclose the ownership and each
20 controlling interest in the proposed operation. The applicant shall
21 also disclose all other mining operations within the United States
22 which the applicant operates or in which the applicant has an
23 ownership or controlling interest. In addition, the applicant shall
24 disclose and may enumerate and describe the circumstances of: (1) Any
25 past or present bankruptcies involving the ownerships and their
26 subsidiaries, (2) any abandonment of sites regulated by the model
27 toxics control act, chapter 70.105D RCW, or other similar state
28 remedial cleanup programs, or the federal comprehensive environmental
29 response, compensation, and liability act, 42 U.S.C. Sec. 9601 et
30 seq., as amended, (3) any penalties in excess of ten thousand dollars
31 assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et
32 seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures
33 of financial assurance due to noncompliance with reclamation or
34 remediation requirements. This information shall be available for

1 public inspection and copying at the department of (~~ecology~~) natural
2 resources. Ownership or control of less than ten percent of the stock
3 of a corporation shall not by itself constitute ownership or a
4 controlling interest under this section.

5
6 **Sec. 323.** RCW 78.56.050 and 1994 c 232 s 5 are each amended to
7 read as follows:

8 (1) An environmental impact statement must be prepared for any
9 proposed metals mining and milling operation. The department of
10 (~~ecology~~) natural resources shall be the lead agency in coordinating
11 the environmental review process under chapter 43.21C RCW and in
12 preparing the environmental impact statement, except for uranium and
13 thorium operations regulated under Title 70 RCW.

14 (2) As part of the environmental review of metals mining and
15 milling operations regulated under this chapter, the applicant shall
16 provide baseline data adequate to document the premining conditions at
17 the proposed site of the metals mining and milling operation. The
18 baseline data shall contain information on the elements of the natural
19 environment identified in rules adopted pursuant to chapter 43.21C
20 RCW.

21 (3) The department of (~~ecology, after consultation with the~~
22 ~~department of fish and wildlife,~~) natural resources shall incorporate
23 measures to mitigate significant probable adverse impacts to fish and
24 wildlife as part of the (~~department of ecology's~~) department's
25 permit requirements for the proposed operation.

26 (4) In conducting the environmental review and preparing the
27 environmental impact statement, the department of (~~ecology~~) natural
28 resources shall cooperate with all affected local governments to the
29 fullest extent practicable.

30
31 **Sec. 324.** RCW 78.56.060 and 1994 c 232 s 6 are each amended to
32 read as follows:

33 The department of (~~ecology~~) natural resources will appoint a
34 metals mining coordinator. The coordinator will maintain current

1 information on the status of any metals mining and milling operation
2 regulated under this chapter from the preparation of the environmental
3 impact statement through the permitting, construction, operation, and
4 reclamation phases of the project or until the proposal is no longer
5 active. The coordinator shall also maintain current information on
6 postclosure activities. The coordinator will act as a contact person
7 for the applicant, the operator, and interested members of the public.
8 The coordinator may also assist agencies with coordination of their
9 inspection and monitoring responsibilities.

10

11 **Sec. 325.** RCW 78.56.080 and 1997 c 170 s 1 are each amended to
12 read as follows:

13 (1) The metals mining account is created in the state treasury.
14 Expenditures from this account are subject to appropriation.
15 Expenditures from this account may only be used for: (a) The
16 additional inspections of metals mining and milling operations
17 required by RCW 78.56.070 and (b) the metals mining coordinator
18 established in RCW 78.56.060.

19 (2)~~((a))~~ As part of its normal budget development process and in
20 consultation with the metals mining industry, the department of
21 ~~((ecology))~~ natural resources shall estimate the costs required ~~((for~~
22 ~~the department))~~ to meet its obligations for the additional
23 inspections of metals mining and milling operations required by
24 chapter 232, Laws of 1994. The department shall also estimate the
25 cost of employing the metals mining coordinator established in RCW
26 78.56.060.

27 ~~((b) As part of its normal budget development process and in~~
28 ~~consultation with the metals mining industry, the department of~~
29 ~~natural resources shall estimate the costs required for the department~~
30 ~~to meet its obligations for the additional inspections of metals~~
31 ~~mining and milling operations required by chapter 232, Laws of 1994.))~~

32 (3) Based on the cost estimates generated by the department of
33 ~~((ecology and the department of))~~ natural resources, the department
34 ~~((of ecology))~~ shall establish the amount of a fee to be paid by each

1 active metals mining and milling operation regulated under this
2 chapter. The fee shall be established at a level to fully recover the
3 direct and indirect costs of the (~~agency~~) department's
4 responsibilities identified in subsection (2) of this section. The
5 amount of the fee for each operation shall be proportional to the
6 number of visits required per site. Each applicant for a metals
7 mining and milling operation shall also be assessed the fee based on
8 the same criterion. The department (~~of ecology~~) may adjust the fees
9 established in this subsection if unanticipated activity in the
10 industry increases or decreases the amount of funding necessary to
11 meet (~~agencies~~) the agency's inspection responsibilities.

12 (4) The department of (~~ecology~~) natural resources shall collect
13 the fees established in subsection (3) of this section. All moneys
14 from these fees shall be deposited into the metals mining account.

15
16 **Sec. 326.** RCW 78.56.110 and 1995 c 223 s 1 are each amended to
17 read as follows:

18 (1) The department of ecology shall not issue necessary permits to
19 an applicant for a metals mining and milling operation until the
20 applicant has deposited with the department of ecology a performance
21 security which is acceptable to the department of ecology based on the
22 requirements of subsection (2) of this section. This performance
23 security may be:

- 24 (a) Bank letters of credit;
- 25 (b) A cash deposit;
- 26 (c) Negotiable securities;
- 27 (d) An assignment of a savings account;
- 28 (e) A savings certificate in a Washington bank; or
- 29 (f) A corporate surety bond executed in favor of the department of
30 ecology by a corporation authorized to do business in the state of
31 Washington under Title 48 RCW.

32 The department of ecology may, for any reason, refuse any
33 performance security not deemed adequate.

1 (2) The performance security shall be conditioned on the faithful
2 performance of the applicant or operator in meeting the following
3 obligations:

4 (a) Compliance with the environmental protection laws of the state
5 of Washington administered by the department of ecology, or permit
6 conditions administered by the department of ecology, associated with
7 the construction, operation, and closure pertaining to metals mining
8 and milling operations, and with the related environmental protection
9 ordinances and permit conditions established by local government when
10 requested by local government;

11 (b) Reclamation of metals mining and milling operations that do
12 not meet the threshold of surface mining as defined by RCW
13 78.44.031(17);

14 (c) Postclosure environmental monitoring as determined by the
15 department of ecology; and

16 (d) Provision of sufficient funding as determined by the
17 department of ecology for cleanup of potential problems revealed
18 during or after closure.

19 (3) The department of ecology may, if it deems appropriate, adopt
20 rules for determining the amount of the performance security,
21 requirements for the performance security, requirements for the issuer
22 of the performance security, and any other requirements necessary for
23 the implementation of this section.

24 (4) The department of ecology may increase or decrease the amount
25 of the performance security at any time to compensate for any
26 alteration in the operation that affects meeting the obligations in
27 subsection (2) of this section. At a minimum, the department shall
28 review the adequacy of the performance security every two years.

29 (5) Liability under the performance security shall be maintained
30 until the obligations in subsection (2) of this section are met to the
31 satisfaction of the department of ecology. Liability under the
32 performance security may be released only upon written notification by
33 the department of ecology.

34

1 (6) Any interest or appreciation on the performance security shall
2 be held by the department of ecology until the obligations in
3 subsection (2) of this section have been met to the satisfaction of
4 the department of ecology. At such time, the interest shall be
5 remitted to the applicant or operator. However, if the applicant or
6 operator fails to comply with the obligations of subsection (2) of
7 this section, the interest or appreciation may be used by the
8 department of ecology to comply with the obligations.

9 (7) (~~Only one agency may require a performance security to~~
10 ~~satisfy the deposit requirements of RCW 78.44.087, and only one agency~~
11 ~~may require a performance security to satisfy the deposit requirements~~
12 ~~of this section. However,)) A single performance security, when
13 acceptable to (~~both the department of ecology and~~) the department of
14 natural resources, may be utilized (~~by both agencies~~) to satisfy the
15 requirements of this section and RCW 78.44.087.~~

16
17 **Sec. 327.** RCW 78.56.160 and 1998 c 245 s 161 are each amended to
18 read as follows:

19 (1) Until June 30, 1996, there shall be a moratorium on metals
20 mining and milling operations using the heap leach extraction process.
21 The department of natural resources (~~and the department of ecology~~)
22 shall (~~jointly~~) review the existing laws and regulations pertaining
23 to the heap leach extraction process for their adequacy in
24 safeguarding the environment.

25 (2) Metals mining using the process of in situ extraction is
26 permanently prohibited in the state of Washington.

27
28 **Sec. 328.** RCW 78.60.070 and 2007 c 338 s 1 are each amended to
29 read as follows:

30 (1) Any person proposing to drill a well or redrill an abandoned
31 well for geothermal resources shall file with the department a written
32 application for a permit to commence such drilling or redrilling on a
33 form prescribed by the department accompanied by a permit fee of two
34

1 hundred dollars. (~~The department shall forward a duplicate copy to~~
2 ~~the department of ecology within ten days of filing.~~)

3 (2) Upon receipt of a proper application relating to drilling or
4 redrilling the department shall set a date, time, and place for a
5 public hearing on the application, which hearing shall be in the
6 county in which the drilling or redrilling is proposed to be made, and
7 shall instruct the applicant to publish notices of such application
8 and hearing by such means and within such time as the department shall
9 prescribe. The department shall require that the notice so prescribed
10 shall be published twice in a newspaper of general circulation within
11 the county in which the drilling or redrilling is proposed to be made
12 and in such other appropriate information media as the department may
13 direct.

14 (3) Any person proposing to drill a core hole for the purpose of
15 gathering geothermal data, including but not restricted to heat flow,
16 temperature gradients, and rock conductivity, shall be required to
17 obtain a single permit for each core hole according to subsection (1)
18 of this section, including a permit fee for each core hole, but no
19 notice need be published, and no hearing need be held. Such core
20 holes that penetrate more than seven hundred and fifty feet into
21 bedrock shall be deemed geothermal test wells and subject to the
22 payment of a permit fee and to the requirement in subsection (2) of
23 this section for public notices and hearing. In the event geothermal
24 energy is discovered in a core hole, the hole shall be deemed a
25 geothermal well and subject to the permit fee, notices, and hearing.
26 Such core holes as described by this subsection are subject to all
27 other provisions of this chapter, including a bond or other security
28 as specified in RCW 78.60.130.

29 (4) All moneys paid to the department under this section shall be
30 deposited with the state treasurer for credit to the general fund.

31
32 **Sec. 329.** RCW 78.60.080 and 1974 ex.s. c 43 s 8 are each amended
33 to read as follows:

1 A permit shall be granted only if the department is satisfied that
2 the area is suitable for the activities applied for; that the
3 applicant will be able to comply with the provisions of this chapter
4 and the rules and regulations enacted hereunder; and that a permit
5 would be in the best interests of the state.

6 The department shall not allow operation of a well under permit if
7 it finds that the operation of any well will unreasonably decrease
8 groundwater available for prior water rights in any aquifer or other
9 groundwater source for water for beneficial uses, unless such affected
10 water rights are acquired by condemnation, purchase or other means.

11 The department shall have the authority to condition the permit as
12 it deems necessary to carry out the provisions of this chapter,
13 including but not limited to conditions to reduce any environmental
14 impact.

15 ~~((The department shall forward a copy of the permit to the
16 department of ecology within five days of issuance.))~~

17
18 **Sec. 330.** RCW 78.60.100 and 2007 c 338 s 2 are each amended to
19 read as follows:

20 Any well or core hole drilled under authority of this chapter from
21 which:

22 (1) It is not technologically practical to derive the energy to
23 produce electricity commercially, or the owner or operator has no
24 intention of deriving energy to produce electricity commercially, and

25 (2) Usable minerals cannot be derived, or the owner or operator
26 has no intention of deriving usable minerals, shall be plugged and
27 abandoned as provided in this chapter or, upon the owner's or
28 operator's written application to the department ~~((of natural
29 resources and with the concurrence and approval of the department of
30 ecology))~~, jurisdiction over the well may be transferred to the
31 department ~~((of ecology))~~ and, in such case, the well shall no longer
32 be subject to the provisions of this chapter but shall be subject to
33 any applicable laws and rules relating to wells drilled for
34 appropriation and use of groundwaters. If an application is made to

1 transfer jurisdiction, a copy of all logs, records, histories, and
2 descriptions shall be provided to the department (~~(of ecology)~~) by the
3 applicant.

4
5 **Sec. 331.** RCW 90.03.247 and 2003 c 39 s 48 are each amended to
6 read as follows:

7 Whenever an application for a permit to make beneficial use of
8 public waters is approved relating to a stream or other water body for
9 which minimum flows or levels have been adopted and are in effect at
10 the time of approval, the permit shall be conditioned to protect the
11 levels or flows. No agency may establish minimum flows and levels or
12 similar water flow or level restrictions for any stream or lake of the
13 state other than the department of ecology whose authority to
14 establish is exclusive, as provided in chapter 90.03 RCW and RCW
15 90.22.010 and 90.54.040. The provisions of other statutes, including
16 but not limited to RCW (~~(77.55.100)~~) 77.55.021 and chapter 43.21C RCW,
17 may not be interpreted in a manner that is inconsistent with this
18 section. In establishing such minimum flows, levels, or similar
19 restrictions, the department shall, during all stages of development
20 (~~(by the department of ecology)~~) of minimum flow proposals, consult
21 with, and carefully consider the recommendations of(~~(, the department~~
22 ~~of fish and wildlife, the department of community, trade, and economic~~
23 ~~development, the department of agriculture, and representatives of~~
24 ~~the)~~) affected Indian tribes. (~~(Nothing herein shall preclude the~~
25 ~~department of fish and wildlife, the department of community, trade,~~
26 ~~and economic development, or the department of agriculture from~~
27 ~~presenting its views on minimum flow needs at any public hearing or to~~
28 ~~any person or agency, and the department of fish and wildlife, the~~
29 ~~department of community, trade, and economic development, and the~~
30 ~~department of agriculture are each empowered to participate in~~
31 ~~proceedings of the federal energy regulatory commission and other~~
32 ~~agencies to present its views on minimum flow needs.)~~)

33
34

1 **Sec. 332.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
2 read as follows:

3 Upon receipt of a proper application, the department shall
4 instruct the applicant to publish notice thereof in a form and within
5 a time prescribed by the department in a newspaper of general
6 circulation published in the county or counties in which the storage,
7 diversion, and use is to be made, and in such other newspapers as the
8 department may direct, once a week for two consecutive weeks. (~~Upon~~
9 ~~receipt by the department of an application it shall send notice~~
10 ~~thereof containing pertinent information to the director of fish and~~
11 ~~wildlife.~~)

12
13 **Sec. 333.** RCW 90.03.290 and 2001 c 239 s 1 are each amended to
14 read as follows:

15 (1) When an application complying with the provisions of this
16 chapter and with the rules of the department has been filed, the same
17 shall be placed on record with the department, and it shall be its
18 duty to investigate the application, and determine what water, if any,
19 is available for appropriation, and find and determine to what
20 beneficial use or uses it can be applied. If it is proposed to
21 appropriate water for irrigation purposes, the department shall
22 investigate, determine and find what lands are capable of irrigation
23 by means of water found available for appropriation. If it is
24 proposed to appropriate water for the purpose of power development,
25 the department shall investigate, determine and find whether the
26 proposed development is likely to prove detrimental to the public
27 interest, having in mind the highest feasible use of the waters
28 belonging to the public.

29 (2)(a) If the application does not contain, and the applicant does
30 not promptly furnish sufficient information on which to base such
31 findings, the department may issue a preliminary permit, for a period
32 of not to exceed three years, requiring the applicant to make such
33 surveys, investigations, studies, and progress reports, as in the
34 opinion of the department may be necessary. If the applicant fails to

1 comply with the conditions of the preliminary permit, it and the
2 application or applications on which it is based shall be
3 automatically canceled and the applicant so notified. If the holder
4 of a preliminary permit shall, before its expiration, file with the
5 department a verified report of expenditures made and work done under
6 the preliminary permit, which, in the opinion of the department,
7 establishes the good faith, intent, and ability of the applicant to
8 carry on the proposed development, the preliminary permit may, with
9 the approval of the governor, be extended, but not to exceed a maximum
10 period of five years from the date of the issuance of the preliminary
11 permit.

12 (b) For any application for which a preliminary permit was issued
13 and for which the availability of water was directly affected by a
14 moratorium on further diversions from the Columbia river during the
15 years from 1990 to 1998, the preliminary permit is extended through
16 June 30, 2002. If such an application and preliminary permit were
17 canceled during the moratorium, the application and preliminary permit
18 shall be reinstated until June 30, 2002, if the application and
19 permit: (i) Are for providing regional water supplies in more than
20 one urban growth area designated under chapter 36.70A RCW and in one
21 or more areas near such urban growth areas, or the application and
22 permit are modified for providing such supplies, and (ii) provide or
23 are modified to provide such regional supplies through the use of
24 existing intake or diversion structures. The authority to modify such
25 a canceled application and permit to accomplish the objectives of
26 (b)(i) and (ii) of this subsection is hereby granted.

27 (3) The department shall make and file as part of the record in
28 the matter, written findings of fact concerning all things
29 investigated, and if it shall find that there is water available for
30 appropriation for a beneficial use, and the appropriation thereof as
31 proposed in the application will not impair existing rights or be
32 detrimental to the public welfare, it shall issue a permit stating the
33 amount of water to which the applicant shall be entitled and the
34 beneficial use or uses to which it may be applied: PROVIDED, That

1 where the water applied for is to be used for irrigation purposes, it
2 shall become appurtenant only to such land as may be reclaimed thereby
3 to the full extent of the soil for agricultural purposes. But where
4 there is no unappropriated water in the proposed source of supply, or
5 where the proposed use conflicts with existing rights, or threatens to
6 prove detrimental to the public interest, having due regard to the
7 highest feasible development of the use of the waters belonging to the
8 public, it shall be duty of the department to reject such application
9 and to refuse to issue the permit asked for.

10 (4) If the permit is refused because of conflict with existing
11 rights and such applicant shall acquire same by purchase or
12 condemnation under RCW 90.03.040, the department may thereupon grant
13 such permit. Any application may be approved for a less amount of
14 water than that applied for, if there exists substantial reason
15 therefor, and in any event shall not be approved for more water than
16 can be applied to beneficial use for the purposes named in the
17 application. In determining whether or not a permit shall issue upon
18 any application, it shall be the duty of the department to investigate
19 all facts relevant and material to the application. After the
20 department approves said application in whole or in part and before
21 any permit shall be issued thereon to the applicant, such applicant
22 shall pay the fee provided in RCW 90.03.470(~~(+ PROVIDED FURTHER, That~~
23 ~~in the event a permit is issued by the department upon any~~
24 ~~application, it shall be its duty to notify the director of fish and~~
25 ~~wildlife of such issuance)~~)).

26
27 **Sec. 334.** RCW 90.03.360 and 1994 c 264 s 85 are each amended to
28 read as follows:

29 (1) The owner or owners of any water diversion shall maintain, to
30 the satisfaction of the department of ecology, substantial controlling
31 works and a measuring device constructed and maintained to permit
32 accurate measurement and practical regulation of the flow of water
33 diverted. Every owner or manager of a reservoir for the storage of
34 water shall construct and maintain, when required by the department,

1 any measuring device necessary to ascertain the natural flow into and
2 out of said reservoir.

3 Metering of diversions or measurement by other approved methods
4 shall be required as a condition for all new surface water right
5 permits, and except as provided in subsection (2) of this section, may
6 be required as a condition for all previously existing surface water
7 rights. The department may also require, as a condition for all water
8 rights, metering of diversions, and reports regarding such metered
9 diversions as to the amount of water being diverted. Such reports
10 shall be in a form prescribed by the department.

11 (2) Where water diversions are from waters in which the salmonid
12 stock status is depressed or critical, as determined by the department
13 of fish and wildlife, or where the volume of water being diverted
14 exceeds one cubic foot per second, the department shall require
15 metering or measurement by other approved methods as a condition for
16 all new and previously existing water rights or claims. The
17 department shall attempt to integrate the requirements of this
18 subsection into its existing compliance workload priorities, but shall
19 prioritize the requirements of this subsection ahead of the existing
20 compliance workload where a delay may cause the decline of wild
21 salmonids. (~~The department shall notify the department of fish and
22 wildlife of the status of fish screens associated with these
23 diversions.~~) This subsection (2) shall not apply to diversions for
24 public or private hatcheries or fish rearing facilities if the
25 diverted water is returned directly to the waters from which it was
26 diverted.

27

28 **Sec. 335.** RCW 90.03.590 and 2003 1st sp.s. c 5 s 16 are each
29 amended to read as follows:

30 (1) On a pilot project basis, the department may enter into a
31 watershed agreement with one or more municipal water suppliers in
32 water resource inventory area number one to meet the objectives
33 established in a water resource management program approved or being
34 developed under chapter 90.82 RCW with the consent of the initiating

1 governments of the water resource inventory area. The term of an
2 agreement may not exceed ten years, but the agreement may be renewed
3 or amended upon agreement of the parties.

4 (2) A watershed agreement must be consistent with:

5 (a) Growth management plans developed under chapter 36.70A RCW
6 where these plans are adopted and in effect;

7 (b) Water supply plans and small water system management programs
8 approved under chapter 43.20 or 70.116 RCW;

9 (c) Coordinated water supply plans approved under chapter 70.116
10 RCW; and

11 (d) Water use efficiency and conservation requirements and
12 standards established by the state department of health or such
13 requirements and standards as are provided in an approved watershed
14 plan, whichever are the more stringent.

15 (3) A watershed agreement must:

16 (a) Require the public water system operated by the participating
17 municipal water supplier to meet obligations under the watershed plan;

18 (b) Establish performance measures and timelines for measures to
19 be completed;

20 (c) Provide for monitoring of stream flows and metering of water
21 use as needed to ensure that the terms of the agreement are met; and

22 (d) Require annual reports from the water users regarding
23 performance under the agreement.

24 (4) As needed to implement watershed agreement activities, the
25 department may provide or receive funding, or both, under its existing
26 authorities.

27 (5) The department must provide opportunity for public review of a
28 proposed agreement before it is executed. The department must make
29 proposed and executed watershed agreements and annual reports
30 available on the department's internet web site.

31 (6) The department must consult with affected local governments
32 (~~and the state departments of health and fish and wildlife~~) before
33 executing an agreement.

34

1 (7) Before executing a watershed agreement, the department must
2 conduct a government-to-government consultation with affected tribal
3 governments. The municipal water suppliers operating the public water
4 systems that are proposing to enter into the agreements must be
5 invited to participate in the consultations. During these
6 consultations, the department and the municipal water suppliers shall
7 explore the potential interest of the tribal governments or
8 governments in participating in the agreement.

9 (8) Any person aggrieved by the department's failure to satisfy
10 the requirements in subsection (3) of this section as embodied in the
11 department's decision to enter into a watershed agreement under this
12 section may, within thirty days of the execution of such an agreement,
13 appeal the department's decision to the pollution control hearings
14 board under chapter 43.21B RCW.

15 (9) Any projects implemented by a municipal water system under the
16 terms of an agreement reached under this section may be continued and
17 maintained by the municipal water system after the agreement expires
18 or is terminated as long as the conditions of the agreement under
19 which they were implemented continue to be met.

20 (10) Before December 31, 2003, and December 31, 2004, the
21 department must report to the appropriate committees of the
22 legislature the results of the pilot project provided for in this
23 section. Based on the experience of the pilot project, the department
24 must offer any suggested changes in law that would improve,
25 facilitate, and maximize the implementation of watershed plans adopted
26 under this chapter.

27

28 **Sec. 336.** RCW 90.16.050 and 2007 c 286 s 1 are each amended to
29 read as follows:

30 (1) Every person, firm, private or municipal corporation, or
31 association hereinafter called "claimant", claiming the right to the
32 use of water within or bordering upon the state of Washington for
33 power development, shall on or before the first day of January of each
34 year pay to the state of Washington in advance an annual license fee,

1 based upon the theoretical water power claimed under each and every
2 separate claim to water according to the following schedule:

3 (a) For projects in operation: For each and every theoretical
4 horsepower claimed up to and including one thousand horsepower, at the
5 rate of eighteen cents per horsepower; for each and every theoretical
6 horsepower in excess of one thousand horsepower, up to and including
7 ten thousand horsepower, at the rate of three and six-tenths cents per
8 horsepower; for each and every theoretical horsepower in excess of ten
9 thousand horsepower, at the rate of one and eight-tenths cents per
10 horsepower.

11 (b) For federal energy regulatory commission projects in
12 operation, the following fee schedule applies in addition to the fees
13 in (a) of this subsection: For each theoretical horsepower of
14 capacity up to and including one thousand horsepower, at the rate of
15 thirty-two cents per horsepower; for each theoretical horsepower in
16 excess of one thousand horsepower, up to and including ten thousand
17 horsepower, at the rate of six and four-tenths cents per horsepower;
18 for each theoretical horsepower in excess of ten thousand horsepower,
19 at the rate of three and two-tenths cents per horsepower.

20 (c) To justify the appropriate use of fees collected under (b) of
21 this subsection, the department of ecology shall submit a progress
22 report to the appropriate committees of the legislature prior to
23 December 31, 2009, and biennially thereafter until December 31, 2017.

24 (i) The progress report will: (A) Describe how license fees were
25 expended in the federal energy regulatory commission licensing process
26 during the current biennium, and expected workload and full-time
27 equivalent employees for federal energy regulatory commission
28 licensing in the next biennium; (B) include any recommendations based
29 on consultation with (~~the departments of ecology and fish and~~
30 ~~wildlife,~~) hydropower project operators(~~(,)~~) and other interested
31 parties; and (C) recognize hydropower operators that exceed their
32 environmental regulatory requirements.

33 (ii) The fees required in (b) of this subsection expire June 30,
34 2017. The biennial progress reports submitted by the department of

1 ecology will serve as a record for considering the extension of the
2 fee structure in (b) of this subsection.

3 (2) The following are exceptions to the fee schedule in subsection
4 (1) of this section:

5 (a) For undeveloped projects, the fee shall be at one-half the
6 rates specified for projects in operation; for projects partly
7 developed and in operation the fees paid on that portion of any
8 project that shall have been developed and in operation shall be the
9 full annual license fee specified in subsection (1) of this section
10 for projects in operation, and for the remainder of the power claimed
11 under such project the fees shall be the same as for undeveloped
12 projects.

13 (b) The fees required in subsection (1) of this section do not
14 apply to any hydropower project owned by the United States.

15 (c) The fees required in subsection (1) of this section do not
16 apply to the use of water for the generation of fifty horsepower or
17 less.

18 (d) The fees required in subsection (1) of this section for
19 projects developed by an irrigation district in conjunction with the
20 irrigation district's water conveyance system shall be reduced by
21 fifty percent to reflect the portion of the year when the project is
22 not operable.

23 (e) Any irrigation district or other municipal subdivision of the
24 state, developing power chiefly for use in pumping of water for
25 irrigation, upon the filing of a statement showing the amount of power
26 used for irrigation pumping, is exempt from the fees in subsection (1)
27 of this section to the extent of the power used for irrigation
28 pumping.

29
30 **Sec. 337.** RCW 90.16.090 and 2007 c 286 s 2 are each amended to
31 read as follows:

32 (1) All fees paid under provisions of this chapter, shall be
33 credited by the state treasurer to the reclamation account created in
34

1 RCW 89.16.020 and subject to legislative appropriation, be allocated
2 and expended by the director of ecology for:

3 (a) Investigations and surveys of natural resources in cooperation
4 with the federal government, or independently thereof, including
5 stream gaging, hydrographic, topographic, river, underground water,
6 mineral and geological surveys; and

7 (b) Expenses associated with staff at the department(~~(s)~~) of
8 ecology (~~(and fish and wildlife)~~) working on federal energy regulatory
9 commission relicensing and license implementation.

10 (2) Unless otherwise required by the omnibus biennial
11 appropriations acts, the expenditures for these purposes must be
12 proportional to the revenues collected under RCW 90.16.050(1).

13
14 **Sec. 338.** RCW 90.22.010 and 1997 c 32 s 4 are each amended to
15 read as follows:

16 The department of ecology may establish minimum water flows or
17 levels for streams, lakes or other public waters for the purposes of
18 protecting fish, game, birds or other wildlife resources, or
19 recreational or aesthetic values of said public waters whenever it
20 appears to be in the public interest to establish the same. In
21 addition, the department of ecology shall(~~(, when requested by the~~
22 ~~department of fish and wildlife to)~~) protect fish, game, or other
23 wildlife resources (~~(under the jurisdiction of the requesting state~~
24 ~~agency)~~), or if the department of ecology finds it necessary to
25 preserve water quality, establish such minimum flows or levels as are
26 required to protect the resource or preserve the water quality
27 (~~(described in the request or determination)~~). (~~(Any request~~
28 ~~submitted by the department of fish and wildlife shall include a~~
29 ~~statement setting forth the need for establishing a minimum flow or~~
30 ~~level.)~~) When the department acts to preserve water quality, it shall
31 include a (~~(similar)~~) statement setting forth the need for
32 establishing a minimum flow or level with the proposed rule filed with
33 the code reviser. This section shall not apply to waters artificially
34 stored in reservoirs, provided that in the granting of storage permits

1 by the department of ecology in the future, full recognition shall be
2 given to downstream minimum flows, if any there may be, which have
3 theretofore been established hereunder.

4
5 **Sec. 339.** RCW 90.22.020 and 1994 c 264 s 87 are each amended to
6 read as follows:

7 Flows or levels authorized for establishment under RCW 90.22.010,
8 or subsequent modification thereof by the department shall be provided
9 for through the adoption of rules. Before the establishment or
10 modification of a water flow or level for any stream or lake or other
11 public water, the department shall hold a public hearing in the county
12 in which the stream, lake, or other public water is located. If it is
13 located in more than one county the department shall determine the
14 location or locations therein and the number of hearings to be
15 conducted. Notice of the hearings shall be given by publication in a
16 newspaper of general circulation in the county or counties in which
17 the stream, lake, or other public waters is located, once a week for
18 two consecutive weeks before the hearing. The notice shall include
19 the following:

20 (1) The name of each stream, lake, or other water source under
21 consideration;

22 (2) The place and time of the hearing;

23 (3) A statement that any person, including any private citizen or
24 public official, may present his or her views either orally or in
25 writing.

26 ~~((Notice of the hearing shall also be served upon the
27 administrators of the departments of social and health services,
28 natural resources, fish and wildlife, and transportation.))~~

29
30 **Sec. 340.** RCW 90.22.060 and 1998 c 245 s 172 are each amended to
31 read as follows:

32 By December 31, 1993, the department of ecology shall, in
33 cooperation with the Indian tribes, ~~((and the department of fish and
34 wildlife,))~~ establish a statewide list of priorities for evaluation of

1 instream flows. In establishing these priorities, the department
2 shall consider the achievement of wild salmonid production as its
3 primary goal.

4
5 **Sec. 341.** RCW 90.24.010 and 1999 c 162 s 1 are each amended to
6 read as follows:

7 Ten or more owners of real property abutting on a lake may
8 petition the superior court of the county in which the lake is
9 situated, for an order to provide for the regulation of the outflow of
10 the lake in order to maintain a certain water level therein. If there
11 are fewer than ten owners, a majority of the owners abutting on a lake
12 may petition the superior court for such an order. The court, after
13 (~~notice to the department of fish and wildlife and~~) a hearing, is
14 authorized to make an order fixing the water level thereof and
15 directing the department of ecology to regulate the outflow therefrom
16 in accordance with the purposes described in the petition. This
17 section shall not apply to any lake or reservoir used for the storage
18 of water for irrigation or other beneficial purposes, or to lakes
19 navigable from the sea.

20
21 **Sec. 342.** RCW 90.24.030 and 1994 c 264 s 88 are each amended to
22 read as follows:

23 The petition shall be entitled "In the matter of fixing the level
24 of Lake in county, Washington", and shall be
25 filed with the clerk of the court and a copy thereof, together with a
26 copy of the order fixing the time for hearing the petition, shall be
27 served on each owner of property abutting on the lake, not less than
28 ten days before the hearing. Like copies shall also be served upon
29 (~~the director of fish and wildlife and~~) the director of ecology.
30 The copy of the petition and of the order fixing time for hearing
31 shall be served in the manner provided by law for the service of
32 summons in civil actions, or in such other manner as may be prescribed
33 by order of the court. For the benefit of every riparian owner
34 abutting on a stream or river flowing from such lake, a copy of the

1 notice of hearing shall be published at least once a week for two
2 consecutive weeks before the time set for hearing in a newspaper in
3 each county or counties wherein located, said notice to contain a
4 brief statement of the reasons and necessity for such application.

5
6 **Sec. 343.** RCW 90.24.060 and 1994 c 264 s 89 are each amended to
7 read as follows:

8 Such improvement or device in said lake for the protection of the
9 fish and game fish therein shall be installed by and under the
10 direction of the board of county commissioners of said county with the
11 approval of the (~~respective directors of the department of fish and~~
12 ~~wildlife and~~) director of the department of ecology of the state of
13 Washington and paid for out of the special fund provided for in RCW
14 90.24.050.

15
16 **Sec. 344.** RCW 90.38.040 and 2001 c 237 s 29 are each amended to
17 read as follows:

18 (1) All trust water rights acquired by the department shall be
19 placed in the Yakima river basin trust water rights program to be
20 managed by the department. The department shall issue a water right
21 certificate in the name of the state of Washington for each trust
22 water right it acquires.

23 (2) Trust water rights shall retain the same priority date as the
24 water right from which they originated. Trust water rights may be
25 modified as to purpose or place of use or point of diversion,
26 including modification from a diversionary use to a nondiversionary
27 instream use.

28 (3) Trust water rights may be held by the department for instream
29 flows, irrigation use, or other beneficial use. Trust water rights
30 may be acquired on a temporary or permanent basis. To the extent
31 practicable and subject to legislative appropriation, trust water
32 rights acquired in an area with an approved watershed plan developed
33 under chapter 90.82 RCW shall be consistent with that plan if the plan
34 calls for such acquisition.

1 (4) A schedule of the amount of net water saved as a result of
2 water conservation projects carried out in accordance with this
3 chapter, shall be developed annually to reflect the predicted
4 hydrologic and water supply conditions, as well as anticipated water
5 demands, for the upcoming irrigation season. This schedule shall
6 serve as the basis for the distribution and management of trust water
7 rights each year.

8 (5)(a) No exercise of a trust water right may be authorized unless
9 the department first determines that no existing water rights, junior
10 or senior in priority, will be impaired as to their exercise or
11 injured in any manner whatever by such authorization.

12 (b) Before any trust water right is exercised, the department
13 shall publish notice thereof in a newspaper of general circulation
14 published in the county or counties in which the storage, diversion,
15 and use are to be made, and in such other newspapers as the department
16 determines are necessary, once a week for two consecutive weeks. (~~At~~
17 ~~the same time the department may also send notice thereof containing~~
18 ~~pertinent information to the director of fish and wildlife.~~)

19 (c) Subsections (4) and (5)(b) of this section do not apply to a
20 trust water right resulting from a donation for instream flows
21 described in RCW 90.38.020(1)(b) or from the lease of a water right
22 under RCW 90.38.020(6) if the period of the lease does not exceed five
23 years. However, the department shall provide the notice described in
24 (b) of this subsection the first time the trust water right resulting
25 from the donation is exercised.

26 (6) RCW 90.03.380 and 90.14.140 through 90.14.910 shall have no
27 applicability to trust water rights held by the department under this
28 chapter or exercised under this section.

29
30 **Sec. 345.** RCW 90.48.170 and 1994 c 264 s 91 are each amended to
31 read as follows:

32 Applications for permits shall be made on forms prescribed by the
33 department and shall contain the name and address of the applicant, a
34 description of the applicant's operations, the quantity and type of

1 waste material sought to be disposed of, the proposed method of
2 disposal, and any other relevant information deemed necessary by the
3 department. Application for permits shall be made at least sixty days
4 prior to commencement of any proposed discharge or permit expiration
5 date, whichever is applicable. Upon receipt of a proper application
6 relating to a new operation, or an operation previously under permit
7 for which an increase in volume of wastes or change in character of
8 effluent is requested over that previously authorized, the department
9 shall instruct the applicant to publish notices thereof by such means
10 and within such time as the department shall prescribe. The
11 department shall require that the notice so prescribed shall be
12 published twice in a newspaper of general circulation within the
13 county in which the disposal of waste material is proposed to be made
14 and in such other appropriate information media as the department may
15 direct. Said notice shall include a statement that any person
16 desiring to present his or her views to the department with regard to
17 said application may do so in writing to the department, or any person
18 interested in the department's action on an application for a permit,
19 may submit his or her views or notify the department of his or her
20 interest within thirty days of the last date of publication of notice.
21 Such notification or submission of views to the department shall
22 entitle said persons to a copy of the action taken on the application.
23 (~~Upon receipt by the department of an application, it shall~~
24 ~~immediately send notice thereof containing pertinent information to~~
25 ~~the director of fish and wildlife and to the secretary of social and~~
26 ~~health services.)) When an application complying with the provisions
27 of this chapter and the rules and regulations of the department has
28 been filed with the department, it shall be its duty to investigate
29 the application, and determine whether the use of public waters for
30 waste disposal as proposed will pollute the same in violation of the
31 public policy of the state.~~

32

33 **Sec. 346.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to
34 read as follows:

1 The department(~~(, in consultation with the departments of fish and~~
2 ~~wildlife and natural resources, and the parks and recreation~~
3 ~~commission,))~~ shall adopt rules establishing a compensation schedule
4 for the discharge of oil in violation of this chapter and chapter
5 90.56 RCW. The amount of compensation assessed under this schedule
6 shall be no less than one dollar per gallon of oil spilled and no
7 greater than one hundred dollars per gallon of oil spilled. The
8 compensation schedule shall reflect adequate compensation for
9 unquantifiable damages or for damages not quantifiable at reasonable
10 cost for any adverse environmental, recreational, aesthetic, or other
11 effects caused by the spill and shall take into account:

12 (1) Characteristics of any oil spilled, such as toxicity,
13 dispersibility, solubility, and persistence, that may affect the
14 severity of the effects on the receiving environment, living
15 organisms, and recreational and aesthetic resources;

16 (2) The sensitivity of the affected area as determined by such
17 factors as: (a) The location of the spill; (b) habitat and living
18 resource sensitivity; (c) seasonal distribution or sensitivity of
19 living resources; (d) areas of recreational use or aesthetic
20 importance; (e) the proximity of the spill to important habitats for
21 birds, aquatic mammals, fish, or to species listed as threatened or
22 endangered under state or federal law; (f) significant archaeological
23 resources as determined by the department of archaeology and historic
24 preservation; and (g) other areas of special ecological or
25 recreational importance, as determined by the department; and

26 (3) Actions taken by the party who spilled oil or any party liable
27 for the spill that: (a) Demonstrate a recognition and affirmative
28 acceptance of responsibility for the spill, such as the immediate
29 removal of oil and the amount of oil removed from the environment; or
30 (b) enhance or impede the detection of the spill, the determination of
31 the quantity of oil spilled, or the extent of damage, including the
32 unauthorized removal of evidence such as injured fish or wildlife.

33

34

1 **Sec. 347.** RCW 90.48.445 and 1999 sp.s. c 11 s 1 are each amended
2 to read as follows:

3 (1) The director shall issue or approve water quality permits for
4 use by federal, state, or local governmental agencies and licensed
5 applicators for the purpose of using, for aquatic noxious weed
6 control, herbicides and surfactants registered under state or federal
7 pesticide control laws, and for the purpose of experimental use of
8 herbicides on aquatic sites, as defined in 40 C.F.R. Sec. 172.3. The
9 issuance of the permits shall be subject only to compliance with:
10 Federal and state pesticide label requirements, the requirements of
11 the federal insecticide, fungicide, and rodenticide act, the
12 Washington pesticide control act, the Washington pesticide application
13 act, and the state environmental policy act, except that:

14 (a) When the director issues water quality permits for the purpose
15 of using glyphosate and surfactants registered by the department of
16 agriculture to control spartina, as defined by RCW 17.26.020, the
17 water quality permits shall contain the following criteria:

18 (i) Spartina treatment shall occur between June 1st and October
19 31st of each year unless the department(~~(, the department of~~
20 ~~agriculture, and the department of fish and wildlife agree to add)~~)
21 authorizes additional dates beyond this period, except that no aerial
22 application shall be allowed on July 4th or Labor Day and for ground
23 application on those days the applicator shall post signs at each
24 corner of the treatment area;

25 (ii) The applicator shall take all reasonable precautions to
26 prevent the spraying of nontarget vegetation and nonvegetated areas;

27 (iii) A period of fourteen days between treatments is required
28 prior to re-treating the previously treated areas;

29 (iv) Aerial or ground broadcast application shall not be made when
30 the wind speed exceeds ten miles per hour; and

31 (v) An application shall not be made when a tidal regime leaves
32 the plants dry for less than four hours.

33 (b) The director shall issue water quality permits for the purpose
34 of using herbicides or surfactants registered by the department of

1 agriculture to control aquatic noxious weeds, other than spartina, and
2 the permit shall state that aerial and ground broadcast applications
3 may not be made when the wind speed exceeds ten miles per hour.

4 (c) The director shall issue water quality permits for the
5 experimental use of herbicides on aquatic sites, as defined in 40
6 C.F.R. Sec. 172.3, when the department of agriculture has issued an
7 experimental use permit, under the authority of RCW 15.58.405(3).
8 Because of the small geographic areas involved and the short duration
9 of herbicide application, water quality permits issued under this
10 subsection are not subject to state environmental policy act review.

11 (2) Applicable requirements established in an option or options
12 recommended for controlling the noxious weed by a final environmental
13 impact statement published under chapter 43.21C RCW by the department
14 prior to May 5, 1995, by the department of agriculture, or by the
15 department of agriculture jointly with other state agencies shall be
16 considered guidelines for the purpose of granting the permits issued
17 under this chapter. This section may not be construed as requiring
18 the preparation of a new environmental impact statement to replace a
19 final environmental impact statement published before May 5, 1995, but
20 instead shall authorize the department of agriculture, as lead agency
21 for the control of spartina under RCW 17.26.015, to supplement, amend,
22 or issue addenda to the final environmental impact statement published
23 before May 5, 1995, which may assess the environmental impact of the
24 application of stronger concentrations of active ingredients, altered
25 application patterns, or other changes as the department of
26 agriculture deems appropriate.

27 (3) The director of ecology may not utilize this permit authority
28 to otherwise condition or burden weed control efforts. Except for
29 permits issued by the director under subsection (1)(c) of this
30 section, permits issued under this section are effective for five
31 years, unless a shorter duration is requested by the applicant. The
32 director's authority to issue water quality modification permits for
33 activities other than the application of surfactants and approved
34 herbicides, to control aquatic noxious weeds or the experimental use

1 of herbicides used on aquatic sites, as defined in 40 C.F.R. Sec.
2 172.3, is unaffected by this section.

3 (4) As used in this section, "aquatic noxious weed" means an
4 aquatic weed on the state noxious weed list adopted under RCW
5 17.10.080.

6
7 **Sec. 348.** RCW 90.48.448 and 1999 c 255 s 3 are each amended to
8 read as follows:

9 (1) Subject to restrictions in this section, a government entity
10 seeking to control a limited infestation of Eurasian water milfoil may
11 use the pesticide 2,4-D to treat the milfoil infestation, without
12 obtaining a permit under RCW 90.48.445, if the milfoil infestation is
13 either recently documented or remaining after the application of other
14 control measures, and is limited to twenty percent or less of the
15 littoral zone of the lake. Any pesticide application made under this
16 section must be made according to all label requirements for the
17 product and must meet the public notice requirements of subsection (2)
18 of this section.

19 (2) Before applying 2,4-D, the government entity shall: (a)
20 Provide at least twenty-one days' notice to the department of
21 ecology(~~(, the department of fish and wildlife, the department of~~
22 ~~agriculture, the department of health,)) and all lake residents; (b)
23 post notices of the intent to apply 2,4-D at all public access points;
24 and (c) place informational buoys around the treatment area.~~

25 (3) The department (~~(of fish and wildlife))~~) may impose timing
26 restrictions on the use of 2,4-D to protect salmon and other fish and
27 wildlife.

28 (4) The department may prohibit the use of 2,4-D if the department
29 finds the product contains dioxin in excess of the standard allowed by
30 the United States environmental protection agency. Sampling protocols
31 and analysis used by the department under this section must be
32 consistent with those used by the United States environmental
33 protection agency for testing this product.

34

1 (5) Government entities using this section to apply 2,4-D may
2 apply for funds from the freshwater aquatic weeds account consistent
3 with the freshwater aquatic weeds management program as provided in
4 RCW 43.21A.660.

5 (6) Government entities using this section shall consider
6 development of long-term control strategies for eradication and
7 control of the Eurasian water milfoil.

8 (7) For the purpose of this section, "government entities"
9 includes cities, counties, state agencies, tribes, special purpose
10 districts, and county weed boards.

11
12 **Sec. 349.** RCW 90.74.020 and 1997 c 424 s 3 are each amended to
13 read as follows:

14 (1) Project proponents may use a mitigation plan to propose
15 compensatory mitigation within a watershed. A mitigation plan shall:

16 (a) Contain provisions that guarantee the long-term viability of
17 the created, restored, enhanced, or preserved habitat, including
18 assurances for protecting any essential biological functions and
19 values defined in the mitigation plan;

20 (b) Contain provisions for long-term monitoring of any created,
21 restored, or enhanced mitigation site; and

22 (c) Be consistent with the local comprehensive land use plan and
23 any other applicable planning process in effect for the development
24 area, such as an adopted subbasin or watershed plan.

25 (2) The department(~~(s)~~) of ecology (~~((and fish and wildlife))~~) may
26 not limit the scope of options in a mitigation plan to areas on or
27 near the project site, or to habitat types of the same type as
28 contained on the project site. The department(~~(s)~~) of ecology (~~((and~~
29 ~~fish and wildlife))~~) shall fully review and give due consideration to
30 compensatory mitigation proposals that improve the overall biological
31 functions and values of the watershed or bay and accommodate the
32 mitigation needs of infrastructure development.

33 The department(~~(s)~~) of ecology (~~((and fish and wildlife are))~~) is
34 not required to grant approval to a mitigation plan that the

1 department(~~(s)~~) finds a does not provide equal or better biological
2 functions and values within the watershed or bay.

3 (3) When making a permit or other regulatory decision under the
4 guidance of this chapter, the department(~~(s of ecology and fish and~~
5 ~~wildlife)~~) shall consider whether the mitigation plan provides equal
6 or better biological functions and values, compared to the existing
7 conditions, for the target resources or species identified in the
8 mitigation plan. This consideration shall be based upon the following
9 factors:

10 (a) The relative value of the mitigation for the target resources,
11 in terms of the quality and quantity of biological functions and
12 values provided;

13 (b) The compatibility of the proposal with the intent of broader
14 resource management and habitat management objectives and plans, such
15 as existing resource management plans, watershed plans, critical areas
16 ordinances, and shoreline master programs;

17 (c) The ability of the mitigation to address scarce functions or
18 values within a watershed;

19 (d) The benefits of the proposal to broader watershed landscape,
20 including the benefits of connecting various habitat units or
21 providing population-limiting habitats or functions for target
22 species;

23 (e) The benefits of early implementation of habitat mitigation for
24 projects that provide compensatory mitigation in advance of the
25 project's planned impacts; and

26 (f) The significance of any negative impacts to nontarget species
27 or resources.

28 (4) A mitigation plan may be approved through a memorandum of
29 agreement between the project proponent and (~~(either)~~) the department
30 of ecology (~~(or the department of fish and wildlife, or both)~~).

31

32 **Sec. 350.** RCW 90.74.030 and 1997 c 424 s 4 are each amended to
33 read as follows:

34

1 (1) In making regulatory decisions relating to wetland or aquatic
2 resource mitigation, the department(~~(s of ecology and fish and~~
3 ~~wildlife))~~) shall, at the request of the project proponent, follow the
4 guidance of RCW 90.74.005 through 90.74.020.

5 (2) If the department of ecology (~~(or the department of fish and~~
6 ~~wildlife))~~) receives multiple requests for review of mitigation plans,
7 (~~each~~) the department may schedule its review of these proposals to
8 conform to available budgetary resources.

9
10 **Sec. 351.** RCW 90.82.048 and 2003 1st sp.s. c 5 s 9 are each
11 amended to read as follows:

12 (1) The timelines and interim milestones in a detailed
13 implementation plan required by RCW 90.82.043 must address the planned
14 future use of existing water rights for municipal water supply
15 purposes, as defined in RCW 90.03.015, that are inchoate, including
16 how these rights will be used to meet the projected future needs
17 identified in the watershed plan, and how the use of these rights will
18 be addressed when implementing instream flow strategies identified in
19 the watershed plan.

20 (2) The watershed planning unit or other authorized lead agency
21 shall ensure that holders of water rights for municipal water supply
22 purposes not currently in use are asked to participate in defining the
23 timelines and interim milestones to be included in the detailed
24 implementation plan.

25 (3) The department of health shall annually compile a list of
26 water system plans and plan updates to be reviewed by the department
27 during the coming year and shall (~~(consult with the departments of~~
28 ~~community, trade, and economic development, ecology, and fish and~~
29 ~~wildlife to))~~): (a) Identify watersheds where further coordination is
30 needed between water system planning and local watershed planning
31 under this chapter; and (b) develop a work plan for conducting the
32 necessary coordination.

33
34

1 **Sec. 352.** RCW 90.90.020 and 2006 c 6 s 3 are each amended to read
2 as follows:

3 (1)(a) Water supplies secured through the development of new
4 storage facilities made possible with funding from the Columbia river
5 basin water supply development account shall be allocated as follows:

6 (i) Two-thirds of active storage shall be available for
7 appropriation for out-of-stream uses; and

8 (ii) One-third of active storage shall be available to augment
9 instream flows and shall be managed by the department of ecology. The
10 timing of releases of this water shall be determined by the department
11 of ecology, in cooperation with the (~~department of fish and wildlife~~
12 ~~and~~) fisheries comanagers, to maximize benefits to salmon and
13 steelhead populations.

14 (b) Water available for appropriation under (a)(i) of this
15 subsection but not yet appropriated shall be temporarily available to
16 augment instream flows to the extent that it does not impair existing
17 water rights.

18 (2) Water developed under the provisions of this section to offset
19 out-of-stream uses and for instream flows is deemed adequate
20 mitigation for the issuance of new water rights provided for in
21 subsection (1)(a) of this section and satisfies all consultation
22 requirements under state law related to the issuance of new water
23 rights.

24 (3) The department of ecology shall focus its efforts to develop
25 water supplies for the Columbia river basin on the following needs:

26 (a) Alternatives to groundwater for agricultural users in the
27 Odessa subarea aquifer;

28 (b) Sources of water supply for pending water right applications;

29 (c) A new uninterruptible supply of water for the holders of
30 interruptible water rights on the Columbia river mainstem that are
31 subject to instream flows or other mitigation conditions to protect
32 stream flows; and

33 (d) New municipal, domestic, industrial, and irrigation water
34 needs within the Columbia river basin.

1 (4) The one-third/two-thirds allocation of water resources between
2 instream and out-of-stream uses established in this section does not
3 apply to applications for changes or transfers of existing water
4 rights in the Columbia river basin.

5
6 **Sec. 353.** RCW 90.90.030 and 2006 c 6 s 4 are each amended to read
7 as follows:

8 (1) The department of ecology may enter into voluntary regional
9 agreements for the purpose of providing new water for out-of-stream
10 use, streamlining the application process, and protecting instream
11 flow.

12 (2) Such agreements shall ensure that:

13 (a) For water rights issued from the Columbia river mainstem,
14 there is no negative impact on Columbia river mainstem instream flows
15 in the months of July and August as a result of the new appropriations
16 issued under the agreement;

17 (b) For water rights issued from the lower Snake river mainstem,
18 there is no negative impact on Snake river mainstem instream flows
19 from April through August as a result of the new appropriations issued
20 under the agreement; and

21 (c) Efforts are made to harmonize such agreements with watershed
22 plans adopted under the authority of chapter 90.82 RCW that are
23 applicable to the area covered by the agreement.

24 (3) The protection of instream flow as set forth in subsection (2)
25 of this section is adequate for purposes of mitigating instream flow
26 impacts resulting from any appropriations for out-of-stream use made
27 under a voluntary regional agreement, and the only applicable
28 consultation provisions under state law regarding instream flow
29 impacts shall be those set forth in subsection (4) of this section.

30 (4) Before executing a voluntary agreement under this section, the
31 department of ecology shall:

32 (a) Provide a sixty-day period for consultation with county
33 legislative authorities and watershed planning groups with
34 jurisdiction over the area where the water rights included in the

1 agreement are located, (~~the department of fish and wildlife,~~) and
2 affected tribal governments, and federal agencies. (~~The department
3 of fish and wildlife shall provide written comments within that time
4 period.~~) The consultation process for voluntary regional agreements
5 developed under the provisions of this section is deemed adequate for
6 the issuance of new water rights provided for in this section and
7 satisfies all consultation requirements under state law related to the
8 issuance of new water rights; and

9 (b) Provide a thirty-day public review and comment period for a
10 draft agreement, and publish a summary of any public comments
11 received. The thirty-day review period shall not begin until after
12 the department of ecology has concluded its consultation under (a) of
13 this subsection and the comments that have been received by the
14 department are made available to the public.

15 (5) The provisions of subsection (4) of this section satisfy all
16 applicable consultation requirements under state law.

17 (6) The provisions of this section and any voluntary regional
18 agreements developed under such provisions may not be relied upon by
19 the department of ecology as a precedent, standard, or model that must
20 be followed in any other voluntary regional agreements.

21 (7) Nothing in this section may be interpreted or administered in
22 a manner that precludes the processing of water right applications
23 under chapter 90.03 or 90.44 RCW that are not included in a voluntary
24 regional agreement.

25 (8) Nothing in this section may be interpreted or administered in
26 a manner that impairs or diminishes a valid water right or a habitat
27 conservation plan approved for purposes of compliance with the federal
28 endangered species act.

29 (9) The department of ecology shall monitor and evaluate the water
30 allocated to instream and out-of-stream uses under this section,
31 evaluate the program, and provide an interim report to the appropriate
32 committees of the legislature by June 30, 2008. A final report shall
33 be provided to the appropriate committees of the legislature by June
34 30, 2011.

1 (10) If the department of ecology executes a voluntary agreement
2 under this section that includes water rights appropriated from the
3 lower Snake river mainstem, the department shall develop aggregate
4 data in accordance with the provisions of RCW 90.90.050 for the lower
5 Snake river mainstem.

6 (11) Any agreement entered into under this section shall remain in
7 full force and effect through the term of the agreement regardless of
8 the expiration of this section.

9 (12) The definitions in this subsection apply to this section and
10 RCW 90.90.050, and may only be used for purposes of implementing these
11 sections.

12 (a) "Columbia river mainstem" means all water in the Columbia
13 river within the ordinary high water mark of the main channel of the
14 Columbia river between the border of the United States and Canada and
15 the Bonneville dam, and all groundwater within one mile of the high
16 water mark.

17 (b) "Lower Snake river mainstem" means all water in the lower
18 Snake river within the ordinary high water mark of the main channel of
19 the lower Snake river from the head of Ice Harbor pool to the
20 confluence of the Snake and Columbia rivers, and all groundwater
21 within one mile of the high water mark.

22 (13) This section expires June 30, 2012.

23
24 NEW SECTION. **Sec. 354.** RCW 77.55.121 is recodified as a section
25 in chapter 76.09 RCW.

26
27 NEW SECTION. **Sec. 355.** The following acts or parts of acts are
28 each repealed:

29 (1) RCW 79.13.610 (Grazing lands--Fish and wildlife goals--
30 Technical advisory committee--Implementation) and 1998 c 245 s 162 &
31 1993 sp.s. c 4 s 5;

32 (2) RCW 79.105.220 (Lease of tidelands in front of public parks)
33 and 2005 c 155 s 145, 2002 c 152 s 2, & 1984 c 221 s 5;

34

1 (3) RCW 79.135.230 (Intensive management plan for geoducks) and
2 2005 c 155 s 718, 1994 c 264 s 74, & 1984 c 221 s 26;

3 (4) RCW 79.135.310 (Inspection by director of fish and wildlife)
4 and 2005 c 155 s 711, 1994 c 264 s 71, & 1982 1st ex.s. c 21 s 143;

5 (5) RCW 79.135.430 (Seaweed--Enforcement) and 2005 c 155 s 717,
6 2003 c 334 s 444, 1994 c 286 s 3, & 1993 c 283 s 5;

7 (6) RCW 79.145.030 (Coordinating implementation--Rules) and 2005 c
8 155 s 903, 1994 c 264 s 65, & 1989 c 23 s 3;

9 (7) RCW 79A.05.670 (Consultation with government agencies
10 required) and 1999 c 249 s 1102 & 1988 c 75 s 8;

11 (8) RCW 79A.05.735 (Mt. Si conservation area--Management) and 2000
12 c 11 s 60, 1994 c 264 s 23, 1988 c 36 s 17, & 1977 ex.s. c 306 s 3;

13 (9) RCW 79A.50.070 (State lands used for state parks--Certain
14 funds appropriated for rental to be deposited without deduction for
15 management purposes) and 1969 ex.s. c 189 s 3;

16 (10) RCW 76.09.160 (Right of entry by department of ecology) and
17 1974 ex.s. c 137 s 16; and

18 (11) RCW 77.12.360 (Withdrawal of state land from lease--
19 Compensation) and 1980 c 78 s 54, 1969 ex.s. c 129 s 3, & 1955 c 36 s
20 77.12.360."

21

22 Renumber the remaining sections and subparts consecutively and
23 correct any internal references accordingly.

24

25 Correct the title.

EFFECT: Provides direction to the following agencies to
implement the programs under their jurisdiction directly and without
assistance, cooperation, advice, counsel, notice, or interference
from other state agencies: The Department of Fish and Wildlife, the
Department of Ecology, the Department of Natural Resources, the
State Parks and Recreation Commission, the Department of
Agriculture, the Recreation and Conservation Office, and the State
Conservation Commission.

Makes the statutory changes necessary to implement the policy of one
agency implementing each natural resources program.

34

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